

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
PURIFIED CARBOXYMETHYLCELLULOSE) Investigation Nos.:
FROM FINLAND, MEXICO,) 731-TA-1084-1087 (Final)
NETHERLANDS, AND SWEDEN)

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Thursday,
 May 12, 2005

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

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On behalf of the International Trade Commission:

Commissioners:

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 COMMISSIONER MARCIA E. MILLER
 COMMISSIONER JENNIFER A. HILLMAN
 COMMISSIONER CHARLOTTE R. LANE
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Staff:

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Foreign Government Appearance:

On behalf of the Government of Mexico:

JOSE MANUEL VARGAS, Deputy Director General,
International Affairs, Government of Mexico

In Support of the Imposition of Antidumping Duties:

On behalf of Aqualon Company:

JOHN TELEVANTOS, President, Aqualon Company; and
Vice President, Hercules, Incorporated
D. CHARLES HERAK, Carboxymethylcellulose Global
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MARY JEAN CASH, Senior Staff Scientist, Aqualon
Company
DANIEL W. KLETT, Economic Consultant, Capital
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In Opposition to the Imposition of Antidumping Duties:

On behalf of Noviant Group Companies:

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KENNETH MCKENZIE, Director, New Products
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RAY SOMERS, Halliburton Energy Services, Inc.
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MATTHEW J. CLARK, Esquire
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Washington, D.C.

On behalf of Quimica Amtex, S.A. de C.V. (QAM):

CORRADO PIOTTI, Commercial Director, QAM
VOLKER NESSEL, General Manager, QAM

JEFFREY S. NEELEY, Esquire
Greenberg Traurig, LLP
Washington, D.C.

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P R O C E E D I N G S

(9:30 a.m.)

1
2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission I
5 welcome you to this hearing on Investigation Nos.
6 731-TA-1084-1087 (Final) involving Purified
7 Carboxymethylcellulose From Finland, Mexico -- I did
8 it -- the Netherlands and Sweden.

9 The purpose of these investigations is to
10 determine whether an industry in the United States is
11 materially injured or threatened with material injury
12 by reason of less than fair value imports of subject
13 merchandise.

14 Schedules setting forth the presentation of
15 this hearing, notice of investigation and transcript
16 order forms are available at the Secretary's desk.
17 All prepared testimony should be given to the
18 Secretary. Do not place testimony directly on the
19 public distribution table.

20 As all written material will be entered in
21 full into the record it need not be read to us at this
22 time. All witnesses must be sworn in by the Secretary
23 before presenting testimony. I understand the parties
24 are aware of the time allocations. Any questions
25 regarding the time allocations should be directed to

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1 the Secretary.

2 Finally, if you will be submitting documents
3 that contain information you classified as business
4 confidential your requests should comply with
5 Commission Rule 201.6.

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. ABBOTT: Yes, Mr. Chairman. With your
9 permission we will add Illka Taminen, Technical Sales
10 Manager, Noviant, to the calendar on page 3.

11 CHAIRMAN KOPLAN: Without objection. Will
12 you please announce our first witness?

13 MS. ABBOTT: Jose Manuel Vargas, Deputy
14 Director General, International Affairs, Government of
15 Mexico.

16 CHAIRMAN KOPLAN: Good morning. Your
17 microphone? It's on.

18 MR. VARGAS: Okay. Thank you. Good
19 morning. Good morning, everyone. I am Jose Manuel
20 Vargas appearing today on behalf of the Government of
21 Mexico.

22 CHAIRMAN KOPLAN: If you could move that a
23 little closer to you?

24 MR. VARGAS: Yes. I would like to thank the
25 Commission staff for providing Mexico the opportunity

1 to present its views regarding the current antidumping
2 investigation on purified carboxymethylcellulose, CMC,
3 from Finland, Mexico, Netherlands and Sweden.

4 The private parties are in a much better
5 position to discuss those details, and I am not here
6 to repeat their testimony. Instead, I want to take a
7 few minutes to discuss an important issue for Mexico
8 in this case, cumulation.

9 Article 3.3 of the antidumping agreement of
10 the World Trade Organization provides that, "A
11 cumulative assessment of the effects of the imports is
12 appropriate in light of the conditions of competition
13 between the imported products and conditions of
14 competition between the imported products and the like
15 domestic product."

16 In the context of evaluating threat of
17 material injury to a domestic industry, the Tariff Act
18 of 1930 in its Article 771(7)(G) states that, "The
19 Commission shall cumulatively assess the volume and
20 effect of imports of the subject merchandise from all
21 countries if such imports compete with each other and
22 with the domestic like product in the United States
23 market."

24 In the present case Mexican imports play a
25 minor role in the marketplace and are almost entirely

1 confined to narrowed markets and specific customers
2 where they are having no possible effect on the U.S.
3 industry. Thus, there is no meaningful competition
4 between Aqualon and Amtex.

5 Also, in determining whether imports compete
6 with each other and with the domestic like product,
7 the Commission must consider the degree of fungibility
8 of imports from different countries and between
9 imports and the domestic like products including
10 consideration of specific customer requirements and
11 other quality related questions. There is a general
12 administrative guideline accepted by the Commission on
13 that.

14 The aforementioned is related to the fact
15 that the largest customer of Amtex in the U.S.,
16 Azteca, requires certain quality standards of CMC that
17 cannot be supplied by the U.S. sole domestic producer.

18 In this respect, you will hear testimony
19 today and will be able to make up your mind on the
20 facts regarding the absence of competition between
21 U.S. and Mexican products. Therefore, it would be
22 totally inappropriate to cumulate Mexican imports with
23 those from other countries in this investigation.

24 One of the objectives of NAFTA is to create
25 and expand the market for the goods produced in the

1 NAFTA region in order to promote trade flows. There
2 is a meaningful bilateral trade between the industries
3 of Mexico and the U.S. because of our geographical
4 proximity. This is not based on low pricing; instead
5 on the need for alternative suppliers and ease of
6 transportation.

7 For the above-mentioned, Mexico respectfully
8 submits to the Commission that there is no reason to
9 believe that Mexican imports have caused or threatened
10 to cause the alleged injury to the relevant U.S.
11 industry.

12 The Government of Mexico is confident that
13 the Commission will carefully consider all the facts
14 in the record, making a separate finding regarding
15 Mexico in its final determination and further
16 determine that Mexican imports are not the cause of
17 the alleged material injury or threat thereof.

18 This concludes my remarks, and I thank the
19 Commission for considering my testimony in this case.
20 If you have any questions, I will gladly do my best to
21 answer them. Thank you.

22 CHAIRMAN KOPLAN: I very much appreciate
23 your testimony. Let me see if any of my colleagues
24 have questions.

25 (No response.)

1 CHAIRMAN KOPLAN: If not, I thank you very
2 much for coming. If you could submit the text of your
3 statement to the Secretary's office as you leave that
4 would be made a part of the record in full and would
5 be helpful.

6 MR. VARGAS: Thank you so much.

7 CHAIRMAN KOPLAN: Thank you.

8 MS. ABBOTT: Opening remarks on behalf of
9 Petitioners will be by Edward M. Lebow, Haynes and
10 Boone.

11 CHAIRMAN KOPLAN: Thank you, Madam
12 Secretary.

13 Good morning. I think you turned the
14 microphone off. That's okay.

15 MR. LEBOW: I probably speak too loudly
16 anyway.

17 My name is Ed Lebow. I'm with the law firm
18 of Haynes and Boone. I'm here representing the
19 Petitioner, Aqualon Company, a division of Hercules,
20 Inc. With me is my associate, Andrew Ridenour. In
21 addition, Dan Klett of Capital Trade, Brian
22 Westenbroek also of Capital Trade. We'll introduce
23 the witnesses from Aqualon when we take the podium in
24 a few minutes.

25 Aqualon is the sole domestic producer of the

1 subject merchandise, which is purified
2 carboxymethylcellulose, which mercifully we all refer
3 to as CMC, and that may be the last time I will say
4 carboxymethylcellulose this morning. Aqualon's
5 corporate headquarters is in Wilmington, Delaware, and
6 its production facility is in Hopewell, Virginia.

7 Aqualon's CMC business predicament shows
8 what often happens in life; that we have two choices,
9 and neither of them is any good. The Commission knows
10 what they are from the record in this investigation.
11 When Aqualon was faced with very low prices and
12 plummeting volume due to imports from the subject
13 producers going back to 2001, it attempted to hold its
14 price lines, but in the high fixed cost industry that
15 didn't work and volume just started to fade away.

16 It tried the other obvious solution, and
17 that was to lower price in an attempt to take back
18 some share. It also postponed improvements that could
19 have brought its plant back up to its nameplate
20 capacity. Unfortunately, this isn't working either.

21 Although Aqualon has succeeded in filling
22 its reduced capacity plant, it has seen its profits
23 fall even further. Meanwhile, with Aqualon's lower
24 prices the subject imports continue to undersell the
25 domestic industry in most instances, and import

1 volumes continue to increase.

2 What's more, these are supposed to be the
3 good times. The oil industry, particularly natural
4 gas in North America, which is supposed to be
5 undergoing strong growth and which is, is a highly
6 cyclical industry. Aqualon's sales to that sector
7 have as expected grown, yet even now with growing
8 sales to the oil sector profits are minimal. When
9 drilling activity inevitably slows or if the prospect
10 of dumping duties is eliminated, the situation can
11 only go from bad to worse.

12 Aqualon's peril is made even greater by the
13 fact that Respondents' publicly reported unused
14 capacity exceeds total U.S. production. Right now
15 today that capacity overhang just by the laws of
16 supply and demand is putting downward pressure on
17 prices as Respondents, particularly Noviant, lower
18 prices in an attempt to fill the plant.

19 As for their defenses, Respondents have made
20 much of how Aqualon has somehow commoditized the CMC
21 market, whereas the importers were selling more
22 specifically tailored, highly engineered grades for
23 each customer.

24 The Commission's questionnaire responses
25 show otherwise. They show widespread customer

1 perception of the interchangeability between Aqualon's
2 and Respondents' CMC. They show head-to-head
3 competition in numerous customers. They show
4 Respondents usually undersell Aqualon, none of which
5 supports Respondents' self-depiction of selling more
6 highly engineered products.

7 Mr. Klett will discuss during our testimony
8 Respondents' final refuge from the data which has been
9 in attacking, then agreeing with and then in attacking
10 the validity of the pricing product in the
11 Commission's questionnaires.

12 During the preliminary phase of this
13 investigation in their preconference brief Respondents
14 also try the hypothesis that CMC prices have been
15 falling as a result of pressure from substitute
16 hydrocolloids. The facts, however, demonstrate that
17 hydrocolloids are at best weak and occasional
18 substitutes and more often serve in complementary
19 functions with CMC.

20 In fact, Respondent Noviant's own parent
21 company, J.M. Huber, in applying for U.K. antitrust
22 authorization of its acquisition of a hydrocolloid
23 company, C.P. Kelco, even argued in their filings to
24 the U.K. authority, which is attached to Exhibit 6 to
25 our brief, that the products are complements and not

1 substitutes.

2 Respondents' final fallback appears to be to
3 argue that Aqualon isn't injured. I think that from
4 the confidential record the Commission can see that
5 with decreased prices there have been negligible
6 earnings.

7 To put this issue in context, when we return
8 to the podium our initial witness will be John
9 Televantos, president of Aqualon, who will discuss how
10 Hercules management views the performance of the CMC
11 business.

12 In summary, Aqualon will demonstrate and we
13 hope has already demonstrated on the record that it is
14 suffering material injury. Aqualon will demonstrate
15 that the injury is due to imports of CMC dumped by
16 Respondents.

17 Aqualon will demonstrate that it is
18 threatened with even greater injury and that that
19 threat is real and imminent, and Aqualon will
20 demonstrate that each of the many and occasionally
21 mutually inconsistent excuses offered by Respondents
22 are neither supported by the facts or by the law.

23 Thank you very much for your attention to
24 our presentation this morning.

25 CHAIRMAN KOPLAN: Thank you.

1 MS. ABBOTT: Opening remarks on behalf of
2 Respondents will be by Matthew J. Clark, Arent Fox,
3 and Jeffrey S. Neeley, Greenberg Traurig.

4 CHAIRMAN KOPLAN: Good morning.

5 MR. CLARK: Good morning. For the record,
6 I'm Matt Clark of Arent Fox appearing today as counsel
7 for the Noviant Group Companies. Later on today as we
8 take the witness tables I'll introduce the entirety of
9 our panel and our witnesses.

10 CHAIRMAN KOPLAN: If you could move your
11 microphone a bit closer?

12 MR. CLARK: I'm sorry. I apologize.

13 CHAIRMAN KOPLAN: Thank you.

14 MR. CLARK: As we came to the final phase of
15 this case, in particular as we were preparing the
16 prehearing case brief, I asked my colleagues to go
17 back and look for Commission precedent that presented
18 what we considered to be the rather unusual factual
19 circumstance in this case. I think this is a very
20 critical backdrop to the Commission's analysis and to
21 the context of the hearing testimony you'll receive
22 today.

23 On the public record of this case following
24 are the relevant facts. Total U.S. consumption is up
25 in every year of the period of investigation. The

1 domestic industry's market share of that rising market
2 is up in every year of the period of investigation.

3 Subject import market share is down in every
4 year of the period of investigation. Subject imports
5 are down as a percentage of domestic production in
6 every year of the period of investigation and,
7 interestingly, non-subject imports have increased.

8 We can find no prior case where the
9 Commission has made an affirmative determination that
10 presents that constellation of critical facts. Market
11 up. Domestic share up. Subject imports down. Non-
12 subject imports increasing, yet subject imports are
13 the cause of material injury.

14 We weren't able to find a prior case in
15 which the statements made by the purchasers, the
16 customers, the consumers in the market, characterizing
17 the conduct and the behavior of the domestic producer
18 were as damning as they are in this case. I can't
19 remember a case and we couldn't find a case where the
20 allegations of lost sales and lost revenues were so
21 uniformly wrong contradicted by the testimony and the
22 evidence provided by the purchasers themselves.

23 In the testimony you will hear today from
24 the Noviant Group Companies we will make three
25 particular points. First, on the facts there is no

1 basis in the record to cumulate subject imports from
2 Finland with subject imports from other countries.
3 There is simply no reasonable overlap of competition.

4 Second, CMC is not a mere commodity. It may
5 be true that Aqualon treats it as such, but to Noviant
6 CMC is something very different. It is a critical
7 product for our customers. It is a value added
8 product in which we invest significant amounts of
9 innovation, research and development, technical
10 support and R&D.

11 Aqualon has described its R&D effort as a
12 method by which it seeks to reduce its internal cost.
13 You will hear from Noviant that our R&D effort is a
14 little bit different. We don't look inward when we
15 think of research and development. We think of the
16 marketplace. We think of customer needs. Our
17 research and development is shared with our customers,
18 and it reaches out to the marketplace. We are the
19 ones who are increasing the market for CMC.

20 Third, you will hear specific examples and
21 testimony illustrating that CMC exists in a
22 marketplace in which it is surrounded by other
23 competing materials and technologies and that those
24 other products, whether they are wholesale
25 replacements or complements, exert price discipline

1 and pressure on CMC and alter CMC volumes in the
2 marketplace; that Noviant watches the price movements
3 of those materials as part of its normal business, and
4 we would be quite surprised to hear that Aqualon does
5 not also track those movements.

6 Finally, it's not part of our testimony, but
7 a critical part of your review. You will hear from
8 Aqualon that for this case to make sense you have to
9 reach outside the period of investigation. You have
10 to go back and pick up an additional year. There is
11 no legal or factual rationale on the basis. There's
12 no business cycle rationale. There is nothing about
13 this product or the structure of the industry that
14 requires you to deviate from your established
15 practice.

16 Thank you.

17 CHAIRMAN KOPLAN: Thank you.

18 Madam Secretary?

19 MR. NEELEY: I'll take just one minute. I'm
20 Jeffrey Neeley --

21 CHAIRMAN KOPLAN: Yes. Go ahead.

22 MR. NEELEY: -- from the law firm of
23 Greenberg Traurig here on behalf of Quimica Amtex, the
24 Mexican producer.

25 The story that you'll hear from Quimica

1 Amtex today I can describe in a few brief terms. It
2 will be a very different story than you heard from
3 either of the parties this morning.

4 First of all, we heard from Mr. Lebow about
5 excess capacity. That is not the case with Quimica
6 Amtex, and that has major implications on our story.
7 It has major implications because, quite frankly,
8 Quimica Amtex is not desperate to sell products in the
9 United States. Therefore, it can sell at much better
10 prices than some other companies. It is at full
11 capacity and has been for a number of years.

12 Secondly, you will hear from us that Quimica
13 Amtex obviously is in Mexico right next door. This
14 gives it certain logistical advantages that again
15 enable it to be a secondary supplier in a market based
16 on price reasons.

17 Finally, I'll wrap this up in one sentence
18 if I may, Mr. Chairman. You'll hear about quality and
19 performance and the need for qualification.

20 Thank you very much.

21 CHAIRMAN KOPLAN: Thank you, sir.

22 MS. ABBOTT: The first panel in support of
23 the imposition of antidumping duties, please come
24 forward.

25 The witnesses have been sworn.

1 (Witnesses sworn.)

2 CHAIRMAN KOPLAN: Thank you, Madam
3 Secretary.

4 You may proceed.

5 MR. LEBOW: Our first witness on behalf of
6 Petitioner will be Mr. John Televantos, president of
7 the Aqualon Company.

8 CHAIRMAN KOPLAN: Good morning.

9 MR. TELEVANTOS: Good morning, Mr. Chairman
10 and members of the Commission. My name is John
11 Televantos. I am the president of the Aqualon Company
12 and vice president of Hercules.

13 I was educated in England and hold a Ph.D.
14 degree in Chemical Engineering from the University of
15 London. My entire career has been with the U.S.
16 chemical industry, first with Union Carbide in West
17 Virginia and for the past three years with Hercules in
18 Delaware.

19 Aqualon is a world leader in specialty
20 polymers that control the rheology of water-based
21 systems. Most of our products are derived from
22 renewable resources like wood, cotton and guar beans.
23 Our products provide thickening, water retention,
24 adhesive strength, binding and fill formation.
25 They're used in toothpaste, shampoos, water-based

1 paints, for oil drilling, paper coatings, food
2 additives and pharmaceuticals.

3 In addition to purified CMC, also known as
4 cellulose gum, the product which is under review
5 today, we also produce several other cellulose and
6 guar derivatives. We have a total of eight business
7 units in our division. As a group, our business
8 performance is good. The performance of our U.S. CMC
9 business, however, has been unacceptable.

10 As you know already, our profits in this
11 business have been anemic. Aqualon tried for a number
12 of years to maintain CMC prices at a level that would
13 allow us to cover our costs and get a reasonable
14 return. Due to predatory pricing from certain
15 importing competitors, our U.S. sales volume declined
16 precipitously from 2001 to 2002.

17 In response to declining volumes, prices and
18 profits we considered a number of options for our
19 business including closing down our U.S.
20 manufacturing. More recently we became more price
21 competitive with low import prices, and we have seen
22 some volume recovery, but we continue to be undersold
23 by the subject imports, and our profits have not
24 recovered.

25 One of my responsibilities is to decide

1 which of our businesses to expand, which to modernize
2 and, sadly, which ones we have to shut down. Under
3 normal business criteria our CMC business cannot and
4 will not be given capital with the current prospects
5 of very low returns.

6 With continued dumping, the prospects for
7 domestic purified CMC production are not good. These
8 returns are being measured against an already reduced
9 asset base. If we have the same asset base today as
10 we had at the beginning of 2001, our returns will be
11 even more meager.

12 We're not asking for protection from fair
13 competition, but this U.S. business cannot survive in
14 a world in which the euro has appreciated 20 percent
15 during the period of investigation and yet our
16 European competitors' prices in the U.S. have
17 continued to decline.

18 The Commerce Department has found dumping
19 margins of up to 25 percent when looking at
20 Respondents' U.S. sales in 2003 and 2004. During the
21 past year with the appreciating euro and decreasing
22 U.S. prices for CMC those dumping margins cannot but
23 have increased.

24 These predatory moves in the U.S. by certain
25 foreign competitors, notably Noviant, and the harm

1 they have caused us is the basis of our filing of this
2 antidumping petition. We recognize that CMC is not a
3 large business, but it is important to us and to the
4 more than 100 employees involved with the business in
5 the U.S.

6 There's no reason why we should not be able
7 to continue to invest and grow this business in the
8 United States while earning a fair rate of return for
9 our shareholders and providing our employees with a
10 reasonable standard of living.

11 We have continued to improve the efficiency
12 of our operations and cost structure, which are
13 considered to be world class. Our business is very
14 capable of competing and thriving under fair
15 competition in the U.S. market. We know that the
16 purified C business has been materially injured by
17 dumped imports and continues to be threatened with
18 additional injury. We firmly believe that continued
19 dumping threatens the survival of our U.S.
20 manufacturing.

21 Thank you for your careful consideration of
22 our petition.

23 MR. LEBOW: Thank you, Mr. Televantos.

24 Our next witness will be Chuck Herak, and
25 we're going to proceed with a kind of a question and

1 answer format. Chuck, would you identify yourself for
2 the record, please?

3 MR. HERAK: Good morning, Mr. Chairman and
4 members of the Commission. My name is Chuck Herak,
5 and I am the Global Business Director for the CMC
6 Business Unit of the Aqualon Division. I have held
7 this position since October of 2003.

8 I have been with Aqualon for more than 10
9 years now in a variety of positions, including a
10 previous involvement with the CMC business in 1996 and
11 1997 in a position junior to my current position.

12 MR. LEBOW: Let's begin by talking about the
13 product. What exactly is CMC?

14 MR. HERAK: CMC is a white to off-white
15 powder. It's odorless and tasteless. I have a sample
16 here. It looks a little bit like flour. There's some
17 other samples on the table of different particle
18 sizes.

19 It's a thickener and a water binder that has
20 a lot of different applications. I have a sample here
21 which is a one percent solution of the CMC in water.
22 I don't know if you can see it from here, but it's
23 extremely thick and viscous.

24 The product is sold typically in 50 pound
25 bags to a variety of customers. This would be an

1 example of our typical CMC packaging that we sell in.
2 We also have some customers that require packaging in
3 their own bags. They sell it under their own trade
4 name. This would be an example of a customer in the
5 oil industry with their own trade name which they sell
6 to the oil drilling industry.

7 MR. LEBOW: What is CMC used for?

8 MR. HERAK: Well, I'm going to first borrow
9 a tag line from a chemical company, BASF. Maybe
10 you've heard this before. They had an ad campaign
11 where they said, "We don't make the things you use.
12 We make the things you use better."

13 I think that's a good description of CMC.
14 It's generally used at an additive level of less than
15 one percent in a variety of applications. There are
16 four major areas of applications and some other minor
17 areas.

18 The first big area would be the food
19 industry. I have a number of samples on the table
20 there of some of the typical products which would use
21 CMC. There's a hot cocoa mix where the CMC is used to
22 give a little bit more thickness and body to the hot
23 cocoa. There are also some Nutri-Grain cereal bars.
24 The CMC is used in the fruit filling to give a good
25 texture and to retain the moisture in that filling.

1 What I would also like to point out is in
2 that Nutri-Grain bar there are four different
3 hydrocolloids which are used complementary. You'll
4 hear about some of these other hydrocolloids, but in
5 that product the CMC is used in combination with guar,
6 carrageenan and xanthan gum to give an example of how
7 the products are used in a complementary way.

8 The second big area for CMC consumption is
9 in oil drilling, and the CMC is used in the drilling
10 muds to help drill nice, clean, straight holes miles
11 into the ground, to recover the oil, and also when
12 they're drilling it helps to bring the cuttings back
13 to the surface.

14 The third area of big use for CMC would be
15 the paper industry. It's used in coating paper, as
16 you would see in magazines, and also cardboard such as
17 the cardboard used in the packaging on the table. In
18 addition, it's used in paper towels as a strength
19 additive, and there's an example of the Scot paper
20 towels which our CMC is used in.

21 The last significant area of CMC use is in
22 oral care such as toothpaste -- there's a sample of
23 Pepsodent containing the CMC on the table -- and also
24 for denture adhesives.

25 In addition, there are a number of smaller

1 applications, including ceramics and mining and
2 welding rods and pencils and so forth.

3 MR. LEBOW: Would you take a couple of
4 minutes and go over how CMC is produced?

5 MR. HERAK: I have a few charts here that
6 I'll run through quickly just to give you a general
7 overview of how the product is produced, which I think
8 may be helpful to understanding the different grades
9 of CMC.

10 This first chart is showing the reaction.
11 There are three basic reactants in CMC. The first one
12 is cellulose. We can use either wood or cotton. It
13 comes in very big rolls. Here are some examples of
14 small pieces of the cellulose that's used. The two
15 other main ingredients are the caustic soda and the
16 monochloroacetic acid.

17 Based on the reaction conditions of the
18 temperature and the time and the way that the ratios
19 of these products that are added into the reactor, you
20 can produce a very broad range of CMC, but the CMC is
21 all the same basic molecule. It's just slight
22 variations. I believe that the Respondents and the
23 other CMC producers have very similar types of
24 manufacturing processes to this.

25 You'll hear a little bit maybe today about a

1 product called crude CMC. After this reaction step
2 the product is anywhere between maybe 60 and 75
3 percent pure. There are a lot of byproducts produced
4 in the reaction. If you were to make a crude CMC you
5 wouldn't need purification, but for the product today,
6 the subject product, we need to remove those salts and
7 other impurities.

8 This is a schematic showing the CMC going
9 through a number of washing steps with alcohol. The
10 alcohol is actually the red lines going the opposite
11 direction. The CMC here comes out at a highly
12 purified level and then goes on to be dried and to
13 storage. I'd also like to point out the alcohol
14 requires purification to remove the impurities so it
15 can be recycled in the system.

16 Finally, the CMC is classified by particle
17 size. Some customers like larger particles. Some
18 like finer particles, so there's a system for sieving
19 and grinding to achieve the desired particle size, and
20 eventually the product is then of course packaged into
21 the bags like I showed you earlier.

22 I have two photographs of our plant just to
23 give you some idea what the steel and the concrete
24 looks like. This particular building has a number of
25 the reactors where we're producing the CMC, and the

1 following picture shows the alcohol purification
2 stage. This is a big capital investment that is
3 required for the purified CMC, but not for the
4 unpurified.

5 There are other buildings, so this only
6 represents a fraction of the CMC production in
7 Hopewell, but I think it gives a little bit of an idea
8 what it looks like.

9 MR. LEBOW: Will you comment on the
10 different CMC purities and the differences between
11 purified and crude?

12 MR. HERAK: I have another chart for that.
13 The subject merchandise is a purified CMC, which we
14 define as more than 90 percent purity, and that would
15 be approximately one purification step would remove
16 enough salt to get you to about 90 percent.

17 With subsequent purification you can improve
18 the purity even higher, and for the food industry and
19 the regulated industries more than 99.5 percent is
20 required by law.

21 These are some of the applications that I
22 mentioned before. In contrast, the crude CMC is
23 generally less than 75 percent and has much different
24 applications, the most important of those being
25 detergents and washing powders, and it's also used

1 some in textiles and for some of the lower performance
2 requirement drilling applications.

3 MR. LEBOW: Are there any quality or other
4 differences among CMC suppliers?

5 MR. HERAK: The major producers, including
6 ourselves, the Respondents and a few other high-
7 quality producers, have very similar products with
8 very broad product ranges that can be used in most or
9 all of the major applications.

10 In addition, there are a few second tier
11 suppliers as I call them, some in China and some other
12 small countries, that have generally inferior quality
13 that wouldn't be appropriate for most of the U.S.
14 market.

15 MR. LEBOW: And is there any basic
16 difference in the CMC used for the different
17 applications?

18 MR. HERAK: The basic chemistry and the
19 basic molecules are the same. It's all made using the
20 same reactants, which I showed earlier, and the same
21 type of equipment, but there are slight differences
22 depending on the reaction conditions. Depending on
23 whether you use cotton or wood in the reaction you'll
24 get a different viscosity or a different degree of
25 substitution.

1 The customers choose the grade which is best
2 suited for their application which gives a good
3 balance of cost and performance for their needs.

4 MR. LEBOW: How is CMC sold?

5 MR. HERAK: Well, for Aqualon we sell
6 primarily through our own sales force directly to the
7 end customers. We have a very limited amount of sales
8 which go through distributors, and we sell also to
9 some special food blenders that take CMC and they mix
10 it with some other hydrocolloids like guar or xanthan
11 to sell to their food customers.

12 In contrast, for the importers they have
13 three possible channels for distribution. Sometimes
14 they will import the product directly from overseas to
15 some of the major customers. Sometimes they will
16 bring the product into the U.S. They'll take
17 ownership with their U.S. subsidiary and then resell
18 from stock to the customer and sometimes they will
19 sell through distributors.

20 But, in all cases we're competing for the
21 same end users, and we face the import competition
22 through all three of these distribution channels.

23 MR. LEBOW: Could you describe the market
24 conditions and --

25 CHAIRMAN KOPLAN: Mr. Lebow, I just want to

1 make sure that the microphone is picking up the
2 questions as well as the answers.

3 MR. LEBOW: Sorry. Could you describe the
4 conditions of competition in the U.S. market?

5 MR. HERAK: Well, as I mentioned, there are
6 a number of CMC producers that are competing with very
7 broad and comparable product lines. The products for
8 most of the major applications are largely fungible,
9 and usually the customers qualify multiple suppliers
10 and make every effort to use the suppliers against
11 each other to leverage the price lower.

12 MR. LEBOW: You say that the products are
13 generally fungible at a customer level, and
14 Respondents are making a lot of their tailored value-
15 in-use sales. Could you comment on that?

16 MR. HERAK: I'm actually a little bit
17 surprised about that line of argument because I
18 actually view things a little bit differently than
19 that.

20 Aqualon as the long-term supplier to the
21 U.S. CMC market had built excellent relationships with
22 our customers, and we had worked very closely with the
23 technical staffs of many of the major customers to
24 develop new CMC products. Many of the CMC products
25 today were invented by the Aqualon Group.

1 Then in the more recent years things
2 changed. The Respondents cut their prices
3 dramatically. We tried vigorously, but without any
4 success, to convince our customers that we're selling
5 a specialized product, but in the end they said we can
6 get similar performance from the other products, and
7 we're more interested in getting a lower price than we
8 are in specialized products.

9 In addition, there are hundreds of customers
10 across the U.S. in various industries, and there are a
11 number of major customers, some very large customers,
12 that have very high leverage and buying power in the
13 market.

14 Typically the customers buy on annual
15 contracts. That would be the most typical. Some of
16 them will prefer multi-year contracts and some will
17 spot buy, but the annual contract is the most common.
18 Subject to qualification, and most of the customers
19 qualify multiple suppliers with comparable products,
20 then it's usually price which is the main factor in
21 their decision for purchasing.

22 The imports already have a very large share
23 of the U.S. market. In my estimate it's over 50
24 percent of the domestic CMC share. In addition, there
25 is a large excess of worldwide capacity for CMC, and

1 the capacity utilization is very low, particularly
2 among some of the Respondents.

3 I'd also like to comment about some of the
4 other hydrocolloids and the way in which they compete,
5 or in this case actually do not compete, with CMC. I
6 get many contacts from our sales people, emails and
7 phone calls about competitors trying to get our
8 business. I would say though that for every one time
9 I hear any competition with respect to another type of
10 hydrocolloid I get more than 100 contacts with respect
11 to direct competition from other producers of CMC.

12 MR. LEBOW: What is the recent history of
13 the U.S. CMC market?

14 MR. HERAK: Well, starting in 2001 there was
15 a very high level of aggressiveness in the U.S. market
16 particularly by Noviant which had recently made very
17 large capacity additions in their European plant in
18 the 1999 and 2000 timeframe.

19 It was apparent to us they were trying very
20 hard to fill that capacity by selling more material to
21 the U.S. market, which is the largest CMC market in
22 the world. They targeted many of the major customers
23 with extremely low prices. Our sales people were in
24 shock and disbelief by the margin of underselling
25 which we saw.

1 I would like to give an example of one large
2 consumer goods company in America that I think
3 exemplifies both the purchasers' attitudes and also
4 the Respondents' behavior. Procter & Gamble is a very
5 large user of CMC in the U.S. They use CMC for three
6 different areas -- the paper as in paper towels, for
7 some food products, although I think they've
8 subsequently divested that division, and also for oral
9 care products like toothpaste and denture adhesives.

10 P&G qualified numerous CMC suppliers, and
11 then they ran a reverse internet auction to choose
12 their CMC supplier. I'm not sure if you're familiar
13 with the reverse auctions. I imagine maybe you've
14 heard of it before from some other cases, but
15 essentially each of the suppliers is entering numbers
16 into a computer with what price they're willing to bid
17 and were bidding on different lots of CMC for
18 different areas.

19 I'll give an example of the lot that was for
20 the paper towel business. Prior to this time Aqualon
21 was the incumbent for this piece of business. We had
22 well over a million pounds of sales, well over \$2
23 million, at a price of \$1.95.

24 Then for the auction we had our sales team
25 sit in front of the computer, enter the prices and

1 watch the price go down. Simultaneously Noviant is
2 also entering prices, and Procter & Gamble is sitting
3 in front of their computer with a big smile on their
4 face as they watch the price go lower and lower.

5 The price continued to decline all the way
6 to \$1.25, which was a 36 percent reduction from our
7 previous price. At that point we had had enough. We
8 couldn't afford to lower the price further and so we
9 stopped entering any lower prices, and the business
10 went almost entirely to Noviant. It's my
11 understanding that they enjoy all of this business
12 today in North America.

13 Similarly through this auction process we
14 lost the entire CMC food business. We had slightly
15 better success, if you want to call it that, on the
16 oral care. After reducing our price from \$2.02 to
17 \$1.37, a 32 percent reduction, we did manage to hang
18 onto roughly half of the oral care business at that
19 time.

20 There are other stories with other
21 customers. The bidding processes are different, but
22 the pattern is consistent. There was an attack on our
23 business with very low prices from the imported
24 material. Obviously this caused us great stress and
25 we lost a significant amount of volume as a result.

1 Noviant was clearly the most egregious in
2 their attack on our business, but simultaneously Axo
3 and Amtex were both active in the U.S. market also
4 battling for their piece of the pie and for customers
5 either directly or through their distributors.

6 MR. LEBOW: Now, we heard from Mr. Clark
7 this morning about the lack of competition from
8 Noviant Finland, and one of the things that we read in
9 their brief is that Noviant Finland doesn't have GMP
10 certification. Could you comment on that?

11 MR. HERAK: Yes. GMP stands for good
12 manufacturing practice, and it's required to supply
13 products to the food and the other regulated
14 industries.

15 All of the major producers involved in this
16 petition today have GMP capability, including Noviant
17 at two of their three facilities. All of the other
18 major suppliers, even some of the ones not part of
19 this case, have GMP. It's not something that is
20 difficult to obtain. It doesn't require any
21 significant amounts of capital investment.

22 It's much like a restaurant. You need to
23 verify that you have a clean environment that has
24 limited opportunities for contamination that you, of
25 course, wouldn't want to happen in a food product.

1 You don't need any inspection to get GMP. You just
2 need to be available for inspection should an
3 inspector decide that you may not be practicing a
4 clean and safe operation.

5 MR. LEBOW: Does Aqualon meet Respondents or
6 more than one Respondent in a given customer?

7 MR. HERAK: Certainly. As I mentioned
8 previously, the customers like to have multiple
9 suppliers, almost always two and usually three and
10 sometimes more, in an effort to commoditize the
11 product and drive the price down.

12 MR. LEBOW: And does Aqualon meet all the
13 subject country producers throughout the United
14 States?

15 MR. HERAK: Yes. All the Respondents are
16 competing coast-to-coast throughout the U.S. either
17 directly or through their distributors.

18 MR. LEBOW: And does Aqualon meet all the
19 subject country producers and all the major
20 application areas?

21 MR. HERAK: Yes. Generally everyone is
22 active across all the different industry segments with
23 one small exception. Axo is not present in the paper
24 sector.

25 MR. LEBOW: Does any Respondent besides

1 Noviant Finland compete in the oil field market?

2 MR. HERAK: Yes. Axo. They're active at
3 the major oil field accounts trying to sell for the
4 private label similar to the bag I showed you before.
5 In addition, they have their own branded product which
6 is called Staflo, which they sell to some of the
7 middle and smaller sized drilling mud companies.

8 Amtex is also active. They have some sales
9 today at Halliburton, but so far have had limited
10 commercial success.

11 With respect to Noviant, they generally
12 present themselves as one company selling to the
13 market. I believe that they could supply the oil
14 field grades from any of their three plants if they
15 chose to, but I believe that today they're supplying
16 primarily from Finland and maybe some from Sweden.

17 MR. LEBOW: What kind of impact has
18 Respondents' behavior had on Aqualon?

19 MR. HERAK: Well, as we've made clear in our
20 brief and also in the preliminary determination, the
21 nature of the impact to us has changed over time.
22 First I'd like to talk about the initial effect, which
23 was the loss of volume and market share.

24 You can see that starting in 2001 we had
25 nearly 50 percent of the U.S. market, but there was a

1 very significant drop in both volume and in market
2 share in the 2002 time period because of the
3 activities, the very aggressive activities which I
4 discussed earlier.

5 When reality finally set in, when we sat
6 back and looked at how much business we had lost and
7 we realized what the new pricing level was in the
8 market, we regrouped. We did everything we could to
9 cut costs, and then we started lowering our prices to
10 try to regain some of the business which we had lost.
11 You can see that through the period we were able to
12 claw back some of the market share, but not to reach
13 the market share we had in 2001.

14 If we move next to the price, you can see in
15 this chart that between 2001 and 2002 although the
16 price in the market was going down our average price
17 actually was flat, and that's a result of the customer
18 mix. We had lost a lot of the business of the big
19 customers, which generally enjoy more favorable
20 pricing and a larger proportion of our remaining sales
21 went to smaller customers.

22 So you don't see immediately the overall
23 drop in price in our average sales price, but then
24 through the period you can see that it's continued to
25 drop, and as we regain business our average price

1 lowered significantly by about 15 percent at the end
2 of the period compared to 2001.

3 As you would expect, this had a very
4 negative impact on our operating profits. If we index
5 to 2001 and go forward you can see that we drop
6 continuously through the period, even reaching a
7 negative operating profit during 2004.

8 During 2004, as you have read in the
9 materials, we did close one of our production units,
10 the MCA Unit, which was producing one of the key raw
11 materials. We believe that the decision to close this
12 was contributed -- that the Respondents' behavior
13 contributed to the decision to close this facility,
14 but even if you take for the purpose of argument the
15 Respondents' position, which it was unrelated to their
16 behavior, that would be the dotted line.

17 You can see that the profits in 2004,
18 despite a very small recovery, are still only 25
19 percent of the level of the beginning of the period
20 and on an absolute basis are still very anemic and not
21 at a level where we can reinvest in the business.

22 MR. LEBOW: How about capital expenditures
23 and maintenance?

24 MR. HERAK: Well, during this period, as I
25 mentioned, we did everything we could to cut our

1 costs. We deferred maintenance and we did the minimum
2 amount of maintenance necessary to keep our facility
3 running.

4 We deferred a lot of capital expenditures,
5 and in the process we decided not to maintain our
6 facility at the 100 percent rating so we downgraded
7 the capacity by about 20 percent by taking certain
8 equipment out of service. I should point out that the
9 profits that you see, which are extremely low, would
10 have been even lower had it not been for these
11 measures.

12 MR. LEBOW: Can you comment on the apparent
13 increase in Aqualon's R&D expenditures over the period
14 of investigation?

15 MR. HERAK: Well, like the Respondents, as
16 you heard in the opening testimony, we also do
17 technical service for our customers, and we do spend
18 part of our R&D budget on innovation.

19 In addition, during the period we focused a
20 lot of our R&D spending on trying to reduce costs
21 since the prices were dropping so quickly. We did
22 process modifications to improve efficiency and to
23 substitute lower cost raw materials. This is a time
24 consuming and expensive process because we need to run
25 plant trials, and we have to do a lot of applications

1 testing in our laboratories to ensure that the product
2 quality is not changing.

3 We were successful to reduce our raw
4 material costs, and you can see in our numbers that we
5 lowered our raw material costs by 10 percent as a
6 result of these activities.

7 MR. LEBOW: Would you summarize the present
8 condition of Aqualon's CMC business?

9 MR. HERAK: Well, the CMC business is
10 clearly inferior to the performance of all the other
11 Aqualon businesses, and the rates of return are almost
12 nothing. Therefore, we cannot attract capital and
13 reinvest as we need to do to go forward.

14 As you heard in the opening remarks from Mr.
15 Lebow, this is the upside of the cycle. Most of the
16 chemical industry is making huge profits as this
17 cyclical upturn in the industry in 2004. Meanwhile,
18 we are not making hardly any profit. This should be
19 the time where we're reinvesting for the future, but
20 we can't do it when we have a future that's clouded by
21 dumped imports.

22 If the Commission were to make an
23 affirmative decision in this case we would invest in
24 our Hopewell facility to bring our capacity back to
25 100 percent, and I have already been in discussions

1 with our plant manager and our engineer to make
2 contingency plans for this possibility.

3 MR. LEBOW: Would you speak to the threat if
4 there is no affirmative determination?

5 MR. HERAK: Well, as we've heard, Noviant
6 has a large amount of excess capacity, and I believe
7 also that Axo has capacity as well. In total, the
8 European unused capacity is equivalent to our total
9 Aqualon sales in the U.S. market.

10 The subject imports still have more than
11 half of the U.S. market, even though we've taken some
12 market share back. The feedback that I hear from our
13 customers is that our prices are still too high, and
14 we continue to see underselling in the market despite
15 the significant increases in raw material and energy
16 costs that we are incurring.

17 I should point out not only have the
18 Respondents been reducing price at the largest
19 accounts, but it is a very large market with lots of
20 customers. Now the attack has broadened to the middle
21 and small size customers where we still have a
22 stronger position, but an eroding position, and it's
23 one of the areas where we had some remaining profits.

24 If there's no change in the pattern of
25 behavior then it appears very unlikely we can sustain

1 any profit in this business and reinvest for the
2 future.

3 MR. LEBOW: Would you comment on the
4 statement in Respondents' brief that you're kind of a
5 stalking horse for Chinese CMC?

6 MR. HERAK: There's no validity to that
7 allegation whatsoever. We did buy a facility in China
8 in December of 2003 because, as you all know, the
9 Chinese economy is growing very rapidly, and there's
10 more and more consumer goods that are being produced
11 that require CMC.

12 Our sales at that plant are almost entirely
13 to the Chinese domestic market. We have no intention
14 to sell into the U.S. We have not sold one pound of
15 CMC from China into the U.S. We have not sampled one
16 customer with Chinese CMC, and we have not promoted or
17 given any literature about Chinese CMC to any U.S.
18 customer.

19 MR. LEBOW: Speaking right now about the
20 present period, are prices still going down in the
21 U.S. market? Have they started to stabilize or come
22 back up a bit on average?

23 MR. HERAK: Well, in December the Department
24 of Commerce announced suspension of liquidation, and
25 thus it's not surprising that we have seen a modest

1 adjustment to the Respondents' pricing behavior and
2 the prices have drifted upward a small amount.

3 What is surprising though is that given such
4 strong demand in the recent years and with very
5 significant increases in energy and raw material costs
6 that there were no price increases prior to this
7 period.

8 MR. LEBOW: Do you have any final comments?

9 MR. HERAK: I've learned a lot about
10 antidumping through this whole petition exercise, and
11 it's obvious to me that the Commission and their staff
12 are extremely thorough and balanced in the analysis of
13 the data.

14 There's a huge amount of data that's
15 collected, hundreds I'm sure of documents and lots of
16 reports and tables and analyses, and they're going to
17 hear a lot of testimony today not only from us, but of
18 course from the Respondents, but in the end I think it
19 really boils down to a very simple matter. The
20 Respondents aggressively lowered the price in the U.S.
21 market to gain share, and that has been to the severe
22 detriment of the domestic U.S. CMC industry.

23 Thank you.

24 CHAIRMAN KOPLAN: Mr. Herak, at the
25 conclusion of the testimony if you'd leave the

1 exhibits that you have at the witness table and the
2 display table then they'll be available not only to
3 us, but to Respondents as well to look at.

4 MR. HERAK: Certainly.

5 MR. LEBOW: Thank you, Mr. Chairman. Our
6 next witness will be Mary Jean Cash, senior staff
7 scientist at Aqualon.

8 Ms. Cash, would you identify yourself for
9 the record, please?

10 MS. CASH: Yes. I'm Mary Jean Cash, senior
11 staff scientist for Aqualon Division of Hercules. I
12 hold a Bachelor's and a Master's degree in Food
13 Science. I've been with Hercules for nine years.

14 Prior to Hercules I worked for Hoechst
15 Celanese in the Food Ingredient Division. Prior to
16 that I worked for Washington Foods, which is a
17 Baltimore area food company. You may know them for
18 their bakery mixes such as Ragamuffins and Indian Head
19 cornmeal.

20 Prior to Washington Foods I worked for Vie
21 de France, which is a frozen dough manufacturer
22 actually located in Alexandria. They have restaurants
23 and some local bakeries.

24 For Aqualon I provide technical service in
25 applications development. I work with all of the

1 Aqualon cellulose, including cellulose gum and other
2 cellulose derivatives. What I do is I help our sales
3 staff and our customers with technical questions.

4 I help customers choose which cellulose gum
5 type to choose or even which hydrocolloid is
6 appropriate for their application. Then in addition I
7 might answer questions on processing or on testing of
8 the product or on general use of the product.

9 MR. LEBOW: What exactly are hydrocolloids?
10 What are their attributes, and what functions do they
11 perform?

12 MS. CASH: Hydrocolloids are kind of a
13 general term for ingredients normally used in low
14 amounts in an application to control water, so they
15 control water. They add viscosity, moistness or
16 texture to the food. There are quite a few
17 hydrocolloids available in the market, and each of
18 these may be distinguished in a variety of parameters,
19 including solution clarity.

20 Some hydrocolloids make very clear solutions
21 which might be important to a pancake syrup or to a
22 beverage where others do not. Some hydrocolloids are
23 quite acid stable, which is important in a jam or a
24 jelly or fruit flavored drink. Other hydrocolloids
25 are not. Some hydrocolloids thicken. Some gel like

1 you would see in a gelatin dessert or yogurt.

2 Some hydrocolloids are soluble hot. Some
3 are soluble cold, which is important to processing.
4 Some are good water binders; that is, they hold onto
5 water to keep something like a bakery good moist or to
6 keep a toothpaste from separating into a liquid phase.

7 Some hydrocolloids interact with proteins.
8 Some do not. This is useful in stabilizing soy milk
9 proteins if you want to make a fruit flavored beverage
10 because under normal circumstances the proteins will
11 precipitate whereas with particular hydrocolloids
12 present it will stabilize as proteins.

13 Some hydrocolloids carry a bit of flavor or
14 mask flavors. Some do not. All of them have
15 different impacts on what would be called the rheology
16 or flow characteristics of the product.

17 MR. LEBOW: Would you describe some of the
18 attributes of the various hydrocolloids we've heard
19 discussed? Sort of compare and contrast if you
20 wouldn't mind.

21 MS. CASH: Okay. Here we have a chart just
22 comparing some major hydrocolloids. Certainly not all
23 of them are used in food or other regulated products,
24 but just for contrast and comparison CMC actually has
25 quite good solution clarity. It also has quite good

1 thickening or viscosity or water binding
2 characteristics.

3 Xanthan, on the other hand, has only fair
4 clarity, but it has excellent acid stability, and it
5 has something called suspension which helps suspend
6 particulates in a solution without adding a lot of
7 viscosity.

8 Guar gum is a good, efficient thickener, but
9 it tends to have kind of a beany flavor because it's
10 actually a flower of a type of bean. Carrageenan is
11 an excellent thickening or gelling agent, but it's not
12 very tolerant to low pH.

13 Starches are also very good thickening
14 agents, but they tend to mask flavors so in
15 formulations the formulator might have to add extra
16 flavor to somehow compensate for that, so they are all
17 quite different.

18 MR. LEBOW: What are the principal food and
19 personal care uses for CMC, and in these to what
20 extent are other hydrocolloids substitutes?

21 MS. CASH: Well, cellulose gum, and I can
22 give some examples where only cellulose gum or CMC is
23 used. One would be in the table or pancake syrup.
24 That's because CMC provides the right kind of clarity,
25 as well as the right kind of pour so that the Aunt

1 Jemima syrup that you see on the table pours quite
2 similarly to maple syrup. If we were to use a
3 different hydrocolloid in there such as xanthan it
4 might be stringy, and it would be unpleasant.

5 Another area where CMC is used are in corn-
6 based tortillas. It's the only hydrocolloid that's
7 used, and it's used to help maintain moistness in the
8 tortilla so that over several days of storage it
9 doesn't become dry and it can be rolled around the
10 food. It also has a high acceptance in the industry,
11 and it's very unlikely that they would even consider
12 other hydrocolloids.

13 Another area where CMC is used is in pet
14 foods, the kibble type pet foods that has a coating on
15 it so that when the consumer pours water on it they
16 get a bit of a gravy. CMC hydrates quickly. It gives
17 the right appearance and the right texture.

18 Then there are also quite a few areas where
19 hydrocolloids are used, different hydrocolloids are
20 used either in combination or different ones are used
21 in the same application such as toothpaste. Sometimes
22 toothpaste is stabilized with cellulose gum.
23 Sometimes it's stabilized with carrageenan and
24 xanthan. Each of these give a different type of
25 texture to the toothpaste that's desired by the

1 manufacturer, but they are not drop-in replacement for
2 one another.

3 Then there are a lot of areas where
4 hydrocolloids are used complementary, and those are
5 particular in the ice cream industry where actually
6 our customers are blenders. They're not even ice
7 cream producers. They take a variety of hydrocolloids
8 and blend them together in order to make a custom
9 blend for their customer to achieve the right kind of
10 end use or end result so you may see on your ice cream
11 label carrageenan, cellulose gum, guar. All are in
12 there in order to take advantage of the different
13 attributes of each one.

14 Another area is the bakery industry where
15 commonly blends are purchased by the bakery rather
16 than them trying to sort through which hydrocolloid to
17 use, and then there are areas like beverages where you
18 may see cellulose gum to add a little bit of mouth
19 feel. Sometimes xanthan is used. These will give
20 subtle differences in the mouth feel, and one might be
21 desired over the other.

22 MR. LEBOW: Are there any applications where
23 CMC is never or rarely used in the food industry?

24 MS. CASH: Yes. CMC is actually rarely used
25 in very low pH situations such as in a cola or soft

1 drink. Also, CMC is not used in salad dressings both
2 because of the low pH and because it doesn't give the
3 right suspension quality, and there's where you see a
4 lot of xanthan used.

5 MR. LEBOW: How elaborate would it be for a
6 user to switch from CMC to another hydrocolloid or
7 vice versa?

8 MS. CASH: That's usually a quite lengthy
9 process. In order to change hydrocolloids there would
10 first have to be a reformulation of the product that's
11 done in the laboratory, and then after that there will
12 have to be some pilot plant scale up and then plant
13 scale up. There's probably going to be some
14 processing changes because the hydrocolloids are a bit
15 different in processing.

16 Then there will also be stability testing
17 done in the lab to make sure that they're getting the
18 same shelf life and the product is behaving to their
19 expectations over the shelf life. If they're changing
20 hydrocolloids this might even be a new and improved
21 version of the product so there's probably some
22 marketing dollars that are going to go into a new
23 launch.

24 In addition, they may have to do sensory
25 testing where they have an expert panel look at and

1 compare the products to make sure they're getting the
2 attributes they need, and in some situations they
3 might go to an in-home use test where they give the
4 product to consumers, a group of consumers, and ask
5 for feedback for some type of compensation.

6 This is a fairly expensive process. Then
7 absolutely required would be new packaging because the
8 ingredient label must reflect what's actually in the
9 product.

10 MR. LEBOW: Would you contrast that to the
11 qualification process between CMCs from different
12 sources?

13 MS. CASH: In the qualification process of
14 CMC it's much simpler. There will still be some
15 testing of the product, comparison of specification,
16 testing in the lab and then probably some pilot plant
17 work just to make sure the product works okay.
18 However, once qualified then the customer would switch
19 between the suppliers quite readily.

20 MR. LEBOW: Thank you, Ms. Cash.

21 Our next and final witness will be Dan Klett
22 of Capital Trade.

23 MR. KLETT: Good morning, Mr. Chairman,
24 members of the Commission. My name is Daniel Klett.
25 I'm an economist with Capital Trade, Inc., testifying

1 this morning on behalf of Aqualon.

2 The first issue I want to address is
3 Noviant's claim that competition is limited because it
4 sells CMC as a specialty while Aqualon sells CMC as a
5 commodity. Question 2-5 of your purchaser
6 questionnaire specifically asks purchasers whether
7 they distinguish between specialty and standard CMC.
8 The slide before you shows that 32 of 49 purchasers or
9 65 percent did not make this distinction.

10 Of the 17 purchasers that did report a
11 distinction, only five reported U.S. and subject
12 imported CMC being sometimes or never interchangeable.
13 Therefore, only 10 percent of customers of all
14 purchasers distinguished U.S. and subject import CMC
15 on the basis of CMC being a specialty chemical and 90
16 percent did not.

17 Noviant's assertion also is not supported
18 based on how purchasers rated Aqualon and subject CMC
19 for certain non-price factors that would be expected
20 to reflect CMC as a specialty chemical -- product
21 consistency, product exceeding standards, technical
22 support and product range.

23 As you can see from this slide, for these
24 characteristics U.S. and subject imported CMC was
25 overwhelmingly rated as comparable. Where

1 distinctions were reported subject imports did not
2 have any meaningful advantage over Aqualon's.

3 The next slide shows Noviant also made an
4 allegation that there were four characteristics that
5 distinguished U.S. and subject imported CMC that
6 distinguished them on the basis of price. These were
7 availability, product consistency, reliability of
8 supply and quality meeting standards.

9 As you can see from your purchaser
10 questionnaires, U.S. and subject imported CMC also was
11 rated as comparable for these four factors. The
12 result is that price is essentially the de facto
13 purchasing factor for purchasers.

14 The next slide represents purchasers'
15 responses to the question where they were asked to
16 rate the top three purchasing factors. As you can see
17 from this, quality and price were by far rated as the
18 top purchasing factors, and when you compare this to a
19 question where purchasers were asked to rate Aqualon
20 and subject imported CMC on the basis of quality 90
21 percent rated Aqualon and subject imported CMC to be
22 comparable. Again, price becomes the important
23 purchasing factor.

24 The next issue I want to address generally
25 is pricing. Noviant says that price declines

1 experienced by Aqualon are the result of competition
2 with other hydrocolloids and nonsubject imports, not
3 subject CMC imports.

4 I believe a reality check is in order here.
5 Consider the position that Noviant is taking. They
6 say that other hydrocolloids, which by all objective
7 measures compete with CMC at the margins, and non-
8 subject imports, which account for a very small share
9 of the U.S. market, explain price declines for U.S.
10 produced CMC.

11 Furthermore, to support their finding that
12 non-subject imports undersold U.S. CMC they relied on
13 distortive, broad AUV comparisons from purchaser
14 questionnaires. By comparison, they claim that
15 subject CMC imports which account for a very large
16 share of the U.S. market and were found by your staff
17 to be close substitutes did not affect Aqualon's CMC
18 price.

19 The only conceivable way that Aqualon can
20 reconcile these two apparent contradictory positions
21 is to undermine the pricing data in the staff report.
22 Noviant stated that the price comparisons in the staff
23 report are unreliable because they are for overly
24 broad product comparisons.

25 MR. LEBOW: Excuse me, Mr. Klett. You meant

1 to say Noviant, not Aqualon, was trying to undermine
2 the staff questionnaires.

3 MR. KLETT: Okay. Thank you, Mr. Lebow.
4 This is the same assertion that Noviant made in the
5 preliminary determination, and I had expected that in
6 comments to the Commission's draft questionnaires they
7 would have recommended narrower pricing
8 specifications. However, they did not.

9 Instead, as shown in the slide here, their
10 one recommendation was for an even broader
11 specification than that proposed in the draft
12 questionnaires and included both low and medium
13 viscosity CMC grades and represented a combination of
14 six Noviant product specifications in contrast to the
15 one specification recommended by your staff in the
16 draft questionnaires.

17 As an example of the purported distortion in
18 making price comparisons, Noviant shows in Exhibit 9
19 of its brief prices for the same grade, but with
20 suffix distinctions G and P. It is our belief that G
21 relates to a granular particle size and P relates to a
22 finer grind.

23 As shown in this slide, however, when
24 commenting on all the matching characteristics to the
25 Department of Commerce, still Noviant stated that type

1 of grind had no effect on price. Noviant asserts that
2 because the producer to importer pricing comparisons
3 are not reliable that the Commission should rely on
4 purchaser price comparisons which provide the better
5 apples to apples comparison.

6 Conceptually I don't disagree with this
7 assertion, but I don't understand why their analysis
8 in Exhibit 12 to their brief included price data for
9 only six purchasers when there were many more
10 purchasers that reported price data for both U.S. and
11 subject import CMC in overlapping quarters for the
12 same specification. We evaluated price data from all
13 purchasers, and the result of these comparisons are
14 shown at page 37 in Exhibit 3-C of our prehearing
15 brief.

16 More important, their analysis ignored
17 purchaser price data contained in the staff report,
18 which when aggregated show a predominance of
19 underselling in each year of the POI as is shown in
20 Exhibit 3-B of our prehearing brief.

21 Noviant makes a number of points in an
22 attempt to demonstrate that there is no causal link
23 between subject competition and depressed U.S. CMC
24 prices. As shown in the slide here, they are
25 asserting that price declines for subject imports

1 should be greater than for U.S. producers and that
2 margins of underselling should be increasing for a
3 causal link to exist. However, I see no justification
4 why this type of relationship is necessary to
5 establish a causal link, and they did not provide a
6 basis for why this link should exist.

7 The final slide in my presentation is a
8 representation of price trends in the CMC market.
9 Although it's not based on actual data, it does
10 accurately reflect two key points. First, the margins
11 of underselling is listed throughout the POI based on
12 your data. Second, margins of underselling were on
13 average larger earlier in the POI and have decreased.

14 This reflects Aqualon's shift in strategy to
15 be more aggressive in price, to win back volume and
16 market share as was discussed earlier. By definition,
17 this strategy would be expected to result in a
18 reduction in margins of underselling and U.S. prices
19 falling faster than subject import price. However, I
20 don't see how this pattern demonstrates no causal
21 link.

22 Thank you.

23 MR. LEBOW: Mr. Chairman, thank you. That
24 concludes our direct testimony, and we're of course
25 looking forward to answering your questions.

1 CHAIRMAN KOPLAN: Thank you. I want to
2 thank all the witnesses for their testimony this
3 morning. It's been very informative.

4 We'll begin the questioning with
5 Commissioner Miller.

6 COMMISSIONER MILLER: Thank you, Mr.
7 Chairman, and let me join in welcoming the witnesses.
8 We appreciate your willingness to be here and help us
9 understand your industry. It's very useful to us.

10 Apropos of that, I want to start with just a
11 couple questions on the product and clarifying for
12 myself some of what I thought I understood. I want to
13 make sure I have it right. It relates to your
14 descriptions, your diagrams of the manufacturing
15 process. Mr. Herak, I believe that was in your
16 testimony.

17 MR. HERAK: Yes, it was.

18 COMMISSIONER MILLER: Just help me
19 understand one thing about the crude versus purified
20 CMC. I have the impression they were on totally
21 different lines or whatever. Your chart, your page 1
22 chart, describes this process and then shows
23 purification at the end and going on from there.

24 MR. HERAK: Yes.

25 COMMISSIONER MILLER: Are the crude and the

1 purified CMC produced in the same facility up to the
2 point of purification? How does that work?

3 MR. HERAK: Okay. Well, Commissioner
4 Miller, your understanding is very good, but they are
5 generally not produced on the same line. It's the
6 same reactants, the same type of chemistry.

7 Today Aqualon does not produce crude CMC,
8 but it's my understanding that most of the producers
9 which do produce it choose to produce it on separate
10 lines. Theoretically it would be possible to use some
11 of the same equipment in the beginning and then have a
12 choice like you can go for purification or you can go
13 to drying and packaging --

14 COMMISSIONER MILLER: Right.

15 MR. HERAK: -- but I believe for logistical
16 reasons most producers of crude CMC choose to have a
17 separate dedicated line for that product.

18 COMMISSIONER MILLER: Okay. All right. I
19 wanted to make sure I understood. You just said
20 Aqualon does not produce it at this point in any
21 event?

22 MR. HERAK: That is correct.

23 COMMISSIONER MILLER: And does that mean we
24 don't have any producers in the U.S. then?

25 MR. HERAK: There is one producer called

1 Penn Carbose based in Somerset, Pennsylvania.

2 COMMISSIONER MILLER: Okay. But they don't
3 produce the purified CMC?

4 MR. HERAK: That is correct.

5 COMMISSIONER MILLER: All right. A
6 question, Ms. Cash, probably for you or for anyone in
7 the company.

8 I appreciate your description of the other
9 kinds of hydrocolloids. Does Aqualon make any of the
10 other hydrocolloids? You talked about your own
11 assistance to customers in helping them make choices.
12 Does Aqualon produce them?

13 MS. CASH: No. Aqualon just produces
14 cellulose derivatives and guar would be the only
15 exception.

16 COMMISSIONER MILLER: Okay.

17 MS. CASH: We do produce guar.

18 COMMISSIONER MILLER: Okay. All right. I
19 want to clarify those things. Now let me go to some
20 other questions related to just sort of the history of
21 the competition with Noviant in particular.

22 Again, Mr. Herak, coming back to you because
23 of some of your comments, you described these reverse
24 Internet auctions that occurred with Procter & Gamble.
25 What was the timeframe for those?

1 MR. HERAK: Those were in I believe the
2 March or April timeframe of 2001, but in fact even
3 though we lost most of the business, as I described to
4 you, in some cases we didn't lose it immediately.

5 There were a lot of different facilities
6 that P&G has so while some of the paper towels had
7 already run the qualification test and immediately
8 changed, there were others that still needed further
9 qualification so in fact we did continue to supply a
10 proportion of that business into 2001, even though we
11 had officially -- I'm sorry.

12 Yes, into the end of 2001 and the beginning
13 of 2002 even though we had officially lost it in the
14 auction. That's why you see the big volume decrease
15 in 2002.

16 COMMISSIONER MILLER: Okay. Mr. Lebow, help
17 me if I'm incorrect. I think this may have been,
18 unless it was from the preliminary investigation, and
19 we checked with staff. Do we have information
20 regarding these reverse internet auctions in our
21 record?

22 MR. LEBOW: We have information about the
23 lost sales. I'm not sure if we described the
24 mechanism.

25 COMMISSIONER MILLER: Okay.

1 MR. LEBOW: The lost sales are described in
2 the petition, and we also have some correspondence
3 with Procter & Gamble in our postconference brief, but
4 I don't know if we actually described the mechanism of
5 the sale.

6 COMMISSIONER MILLER: Okay. Well, it
7 obviously raises sort of the issue. You are relying
8 heavily on the 2001 information, and you heard in the
9 Respondents' -- Mr. Clark's I believe it was --
10 opening testimony his urging us not to look to the
11 2001 data.

12 Even if we wanted to look to the 2001 data
13 do we have comparable data on the record between the
14 current period of investigation in our final staff
15 report and 2001? Don't we have data problems, in
16 other words? I don't believe we have a consistent
17 data series that would allow us to go back with any
18 reliability to 2001.

19 MR. LEBOW: I think certainly for the
20 performance of the domestic producer you do because as
21 the sole domestic producer I understand in Outboard
22 Motors there was a problem in that case because there
23 were different producers and incomplete data, but you
24 have one domestic producer and complete data from
25 them.

1 Mr. Klett can comment further on the other
2 types of data.

3 MR. KLETT: Commissioner Miller?

4 COMMISSIONER MILLER: Mr. Klett?

5 MR. KLETT: I think in addition to the
6 comparability of the data from Aqualon that in the
7 prelim the importer questionnaire responses were
8 relatively complete coverage as well so that with
9 respect to looking at market share trends I think you
10 have pretty much apples to apples comparisons with
11 respect to the prelim data and the data in the final
12 phase of the investigation.

13 COMMISSIONER MILLER: And you think that's
14 the case even though -- I mean, I know we have to rely
15 on importer questionnaires for import volumes and such
16 because this is not something we can draw from the
17 tariff schedules, correct?

18 MR. KLETT: That's correct. The tariff
19 schedules until just this year did not break out crude
20 and purified, so for that reason you do have to rely
21 on the questionnaire responses for your import
22 statistics.

23 COMMISSIONER MILLER: But it's your view
24 that they would be comparable in terms of the data
25 provided?

1 MR. KLETT: Well, I looked at the responses
2 in the prelim and the responses this time around, and
3 when you look at the overlapping year they were fairly
4 comparable.

5 I think you had good coverage from the
6 importers in the prelim. You had complete coverage
7 from Aqualon obviously in the prelim and this time
8 around as well so that when we constructed the data in
9 our brief, including 2001, it's my view that the data
10 are comparable.

11 COMMISSIONER MILLER: Okay. Well, we'll
12 have to take a look at it. It does strike me as being
13 fairly important. I mean, 2001, all of your data
14 submitted. I mean, you're basing your case, so much
15 of it, based on the 2001 timeframe so I'm not quite
16 sure how we handle that. I think we have to take a
17 good look at whether it will work or whether it's
18 appropriate.

19 2004. Let me jump to that on the other side
20 a bit. I think, Mr. Herak, you may have mentioned
21 that you saw some effect of the petition as of
22 December 2004. Is that right?

23 MR. HERAK: That's correct. There was some
24 I would say moderation in the behavior of the
25 Respondents in terms of the pricing. It mostly

1 materializes in the fourth quarter of 2004 because
2 that's the time when you begin the contract
3 negotiations for many of the annual contracts which
4 would affect the business in 2005.

5 COMMISSIONER MILLER: Okay. All right.

6 MR. HERAK: It's more of a fourth quarter
7 effect I would say.

8 COMMISSIONER MILLER: A fourth quarter
9 effect.

10 MR. HERAK: I mean, generally most of the
11 contracts are started to be negotiated in November and
12 December sometimes they're finalized.

13 COMMISSIONER MILLER: All right. I know
14 those were fairly narrow questions, but just in terms
15 of understanding what record we're looking at it's
16 important I think.

17 I want to go to some broader questions
18 really maybe in the first instance just about general
19 demand. I mean, I think there's understanding and
20 agreement that demand is increased for the product. A
21 lot of it's due to oil field demand.

22 Could you comment on what the perhaps shift
23 -- is it fair to say there's been some kind of shift
24 in the product mix because of the increase in oil
25 field demand and how you see that on what the impact

1 is on the market as a whole and what it means for
2 demand going forward?

3 That's the very big question, which now the
4 yellow light comes on.

5 MR. HERAK: Right. Okay.

6 COMMISSIONER MILLER: Why don't you go ahead
7 and start a response for me if you could, Mr. Herak?

8 MR. HERAK: Well, certainly you are correct,
9 Commissioner, that the demand for the drilling grades
10 of CMC increased very significantly through the
11 period, and it's related primarily to increased
12 drilling for natural gas. The drilling in the U.S. is
13 predominantly for natural gas and to a much lesser
14 extent for oil, but the price for both oil and natural
15 gas have escalated, as you would know.

16 For the immediate future when we still have
17 \$6 or \$7 per I guess a million BTU is the unit for
18 natural gas there should be healthy demand in the
19 immediate future. However, the projections are that
20 when all the infrastructure that's now being built by
21 Exxon-Mobil and Shell and major oil companies to bring
22 natural gas from Qatar, from the Middle East, from
23 Trinidad, from all these other places to the U.S.,
24 that the prices will drop to be half or maybe less
25 than what they are today.

1 Even Alan Greenspan has spoken to this
2 prediction that his expectation is that it's a short-
3 term anomaly in the U.S. natural gas market.

4 COMMISSIONER MILLER: So you don't see the
5 demand carrying on with the same kind of --

6 MR. HERAK: Not indefinitely, and the
7 history in this industry has been very cyclical over
8 the years. There's been many boom and bust cycles --

9 COMMISSIONER MILLER: Yes.

10 MR. HERAK: -- dating long before I was
11 involved with this business.

12 COMMISSIONER MILLER: All right. Thank you.
13 I'll have further questions for the next round. Thank
14 you.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.
16 Commissioner Hillman?

17 COMMISSIONER HILLMAN: Thank you, and I
18 would join my colleagues in welcoming you. We very
19 much appreciate all of the information that you've
20 provided, as well as your testimony this morning.

21 Let me if I can start also in terms of
22 making sure I understand the product and the
23 production of it. A lot of our pricing data, for
24 example, is gathered with a reference to viscosity.
25 I'm trying to make sure I understand the relationship

1 between viscosity and purity.

2 Are they generally one and the same in this
3 product, or can you have different ranges of viscosity
4 within a given level of purity?

5 MR. HERAK: The answer would be the latter.
6 They're mostly unrelated. Essentially, if you think
7 of a CMC molecule kind of like a chain, like a chain
8 of pearls the longer that chain the more viscosity it
9 will have. So it really depends on the length of the
10 chain, the length of the molecule.

11 The purity will have a secondary effect. If
12 you're adding 1 percent of a material that's only 70
13 percent pure, well obviously you're adding less of
14 those chains so it won't have quite the same
15 viscosity, but they're generally two unrelated issues.

16 COMMISSIONER HILLMAN: So when you're
17 producing product you know before you've even started
18 the first stage of the chemical reaction whether this
19 is going to a -- in other words, you already know what
20 viscosity level you want to obtain before you --

21 MR. HERAK: That is correct.

22 COMMISSIONER HILLMAN: -- begin production?

23 MR. HERAK: Right. There's a certain recipe
24 of certain ingredients and certain reaction conditions
25 to get the desired viscosity. That is correct.

1 COMMISSIONER HILLMAN: How often do you then
2 change the recipe and how long does it take from
3 producing at one level of viscosity or one recipe if
4 you will to another?

5 MR. HERAK: We have about 15 what we call
6 kind of like families of products, you know? There's
7 separate subtypes within each of those families, but
8 generally we think of our production runs in terms of
9 the family. Then we would typically run in our plant
10 for a minimum of one to two days usually, sometimes
11 three, four, five days and then we would move on to
12 the next family.

13 So we have a production cycle and it may
14 take us 30 days or 35 days to go all the way around
15 and come back to the first grade of CMC again.

16 COMMISSIONER HILLMAN: When you're switching
17 from one family to another, one grade to another do
18 you stop production or there's just a period in which
19 you're sort of converting the recipe?

20 MR. HERAK: We're just converting the
21 recipe. Our process is what we call semi-continuous,
22 so you put all the ingredients into the reactor and
23 you let it cook for a while and then it goes on to the
24 next step. Then when you empty, then you fill up the
25 reactor again and you just keep going.

1 Our plant is running generally on a 24/7
2 schedule and when we make a grade change we just
3 change the recipe without stopping.

4 COMMISSIONER HILLMAN: Then help me
5 understand, from a cost of production standpoint are
6 there certain grades or for certain end uses that are
7 more costly to produce than others? I'm particularly
8 interested in the difference between the food grade
9 product versus the oil field product.

10 MR. HERAK: Well, there are small
11 differences in cost because the recipes are a little
12 bit different. For example, on the starting cellulose
13 the cotton is typically more expensive than the wood,
14 so the grades that are the very high viscosities which
15 require cotton would be a little more expensive to
16 produce than the ones that are produced from wood.

17 In addition, you may have heard me mention
18 degree of substitution which essentially if you think
19 again of a necklace, how many pendants are you hanging
20 on that necklace or on the pearls. So the more
21 substitution, that adds a little bit more cost. In
22 the range of our products I think it's on the order of
23 maybe 10 to 15 percent difference across the range.

24 COMMISSIONER HILLMAN: Then on the
25 purification side, again presumably the product for

1 going into the oil field is less pure than that going
2 into the food grade or the dental care area. Is there
3 a difference in the actual process? Does it go
4 through less tanks, less filtering? How is it that
5 you adjust the purity level of the product?

6 MR. HERAK: Well, for our production the
7 primary difference in the costs are related to the
8 materials in the recipe, not to the purification. Our
9 products are all produced to at least 98 percent
10 purity, so the ones that are not going to the food
11 industry have to be a minimum of 98, the ones for the
12 food industry have 99.5.

13 So there can be a little slight modification
14 in the purification process, but it doesn't impact the
15 cost very significantly.

16 COMMISSIONER HILLMAN: That's very helpful.
17 Then if we go to the issue of qualification.

18 I'm sorry. Mr. Televantos, did you want to
19 add something?

20 MR. TELEVANTOS: One more thing. The issue
21 of crude versus pure CMC. To purify CMC there's
22 tremendous expensive assets that you need to have for
23 purification so that once you have a purified CMC
24 process you would never want to produce crude because
25 the price of the crude is significantly lower and the

1 cost of manufacturing is significantly more.

2 So once you match reaction and purification
3 and you have the purification you only produce
4 purified grades. Second comment is the oil field
5 grades in fact in some ways are more expensive to make
6 because they're higher viscosity and they use more
7 expensive ingredients.

8 So even though they're slightly lower purity
9 on balance they may be a little more expensive to
10 make.

11 COMMISSIONER HILLMAN: So the oil field
12 product is --

13 MR. TELEVANTOS: Slightly more expensive.

14 COMMISSIONER HILLMAN: -- slightly more
15 costly to produce.

16 MR. HERAK: Correct.

17 COMMISSIONER HILLMAN: That's interesting.
18 Then again, the data in the record, obviously the
19 actual numbers is confidential, but there is a
20 significant price difference between the price of the
21 products being sold -- again, they're obviously all
22 different, but in terms of the products that we've
23 priced most of them are in a fairly specific range and
24 then the oil field ones are clearly in a different
25 range.

1 I'm not going to reveal any of the
2 confidential numbers, but they're different. It's not
3 clear to me why is that because it would not tend to
4 square with what I've just heard in terms of the cost
5 of production.

6 MR. HERAK: Right. Well, it's an excellent
7 question, Commissioner Hillman, and I've asked myself
8 that question many times and the best answer that I
9 can come up with is despite the fact that these
10 materials are as costly and in some cases a little
11 more costly than the others -- the price is lower -- I
12 believe it's because of the industry structure.

13 The drilling fluids companies -- there's
14 four major purchasers in the U.S. and most of them are
15 also global companies, so they have just tremendous
16 buying power.

17 So they're buying thousands of tons where
18 some of the other areas, for example food customers,
19 even the bigger ones are buying maybe a quarter of
20 what the oil service companies are buying and then you
21 have a host of smaller customers which are buying
22 much, much less.

23 So I think it has to do with the fact
24 they're buying very large volumes and therefore they
25 can leverage that to achieve better prices and there's

1 fewer customers.

2 COMMISSIONER HILLMAN: I appreciate those
3 answers. Let me then go to make sure I understand the
4 issue of the qualification. You've all talked about
5 this need to qualify suppliers. Help me understand
6 how specific the qualification is.

7 In other words, are you qualifying a
8 particular facility and an exactly specific grade or
9 is it generally just any product coming out of your
10 facility would be qualified for a given purchaser?
11 I'm trying to understand. P&G has qualified you.
12 What exactly have they qualified you for and how long
13 is the qualification good for?

14 MR. HERAK: I'll comment first and then
15 maybe Ms. Cash will want to add on, but generally it's
16 a specific grade that they qualify. So if they
17 qualify you for a medium viscosity grade and later
18 they have some need for a high viscosity grade that
19 would take a whole different qualification.

20 It can be plant specific or they may qualify
21 all the plants simultaneously.

22 COMMISSIONER HILLMAN: Ms. Cash?

23 MS. CASH: I think what Chuck said is
24 accurate.

25 COMMISSIONER HILLMAN: How long are the

1 qualifications good for? Do they requalify you after
2 a certain period of time or once you're qualified and
3 there's no problems --

4 MS. CASH: The product has a particular
5 specification and as long as we are meeting the
6 specifications required by the customer then it would
7 not change.

8 COMMISSIONER HILLMAN: How long does it take
9 to do this qualification typically? Ms. Cash, you
10 discussed the process, but I didn't get --

11 MS. CASH: It would be customer and
12 application dependent. Some customers might require a
13 bit lengthier process because they have a more
14 sensitive product.

15 COMMISSIONER HILLMAN: Are we talking weeks,
16 months, years?

17 MS. CASH: Weeks to month I guess would be
18 most accurate to say for the qualification between
19 types. Yes.

20 COMMISSIONER HILLMAN: As opposed to this
21 reformulation of say the food goods into which the
22 product goes.

23 MS. CASH: Right.

24 COMMISSIONER HILLMAN: How long does that
25 reformulation take?

1 MS. CASH: If it's something like toothpaste
2 with a very important brand like Colgate it could take
3 years.

4 COMMISSIONER HILLMAN: Years?

5 MS. CASH: Yes.

6 COMMISSIONER HILLMAN: I appreciate those
7 answers. Given that the yellow light has come on I
8 think I will not start another line of questioning at
9 this point.

10 Thank you very much.

11 CHAIRMAN KOPLAN: Thank you, Commissioner.
12 Commissioner Lane?

13 COMMISSIONER LANE: Good morning. I too
14 welcome you to this panel. I want to go back to Mr.
15 Herak on the oil field pricing. Has it always been
16 such a lower price than the rest of the CMC?

17 MR. HERAK: To my memory going back to 10
18 years it's always been a lower price segment compared
19 to the others.

20 COMMISSIONER LANE: Even when the demand in
21 the oil field industry was down?

22 MR. HERAK: Yes.

23 MR. TELEVANTOS: Ms. Lane, if I may add?
24 The oil field industry buys huge quantities of CMC at
25 any given time -- big bulk quantities -- and their

1 quality sensitivity is nowhere near as great as it is
2 for food grade. So they have leveraged suppliers and
3 tried to commoditize what they buy a lot more than
4 most of the other customers in the CMC business and
5 they have been successful.

6 They have spent a lot more time and effort
7 to qualify a number of suppliers, so they can play one
8 against the other. Because of their scale suppliers
9 tend to give them the more volume discount that they
10 deserve. They've always been doing that because of
11 the scale.

12 COMMISSIONER LANE: Thank you. Mr.
13 Televantos, maybe you are the right person to answer
14 this, but maybe not. Throughout the prehearing brief
15 you often referred to Aqualon's change in pricing
16 strategy to recover market share. I'm very interested
17 in how this overall change in your business strategy
18 originated.

19 Specifically, it would be helpful to me if
20 you could explain how the decision to change your
21 pricing strategy came about and what events led
22 Aqualon to make such an important change. Please be
23 as specific as possible, but if the information is
24 confidential please feel free to submit further
25 information in your posthearing brief.

1 MR. TELEVANTOS: Commissioner, let me answer
2 the question as best I can and then Mr. Herak could
3 add to it. Once we've seen the results of the demise
4 of our business in 2002 through the predatory actions
5 primarily of Noviant then we were faced with a number
6 of business options.

7 One was to reduce our costs and try to
8 compete at the lower prices; to shut down our
9 operations and convert the facility into a more
10 productive set of products; and the third one was to
11 try to be more price competitive so that we could
12 regain at least part of our business and go forward.

13 So we did the last two. We reduced our
14 costs in trying to get more price competitive since we
15 were told by the market that price was the biggest
16 factor in regaining business. So it was no more than
17 that.

18 Then we selected the customers that we felt
19 we had the biggest chance of regaining because of
20 previous relationships and we tried to give the
21 minimum reduction in price to regain our business,
22 which we did.

23 COMMISSIONER LANE: Mr. Herak, did you want
24 to add anything to that?

25 MR. HERAK: I think that's a very accurate

1 characterization. I can't really add anything in
2 addition.

3 COMMISSIONER LANE: Thank you. My next
4 question is on page 6 of Quimica Amtex's prehearing
5 brief they state that virtually no U.S. product is
6 sold through distributors while a significant portion
7 of Mexican imports are sold through distributors.

8 However, on page 15 of Petitioner's
9 prehearing brief Aqualon contends that U.S. producers
10 and manufacturers from the subject countries
11 predominantly sell purified CMC directly to end users.
12 Are the Respondents accurate when they contend that a
13 significant portion of subject imports from Mexico are
14 being sold in the U.S. through distributors?

15 MR. HERAK: Let me try to answer that. I
16 believe that it is true that Quimica Amtex does sell
17 to the majority of their customers through
18 distribution instead of through their direct sales
19 force. I believe they have a handful of large
20 accounts that they manage directly and for the other
21 smaller ones they sell through distribution.

22 For the others like Noviant, Noviant is much
23 larger and has more sales and therefore they have a
24 larger proportion of their sales through their own
25 organization as opposed to distributors.

1 So I think if you accumulate everything I
2 think still the majority of the sales out of all of
3 the Respondents is probably through their own sales
4 force as opposed to through distributors, but Amtex is
5 a little bit different in their balance between own
6 sales and through distribution.

7 COMMISSIONER LANE: Thank you.

8 MR. HERAK: We do see the competition at the
9 end customer regardless of the channel.

10 COMMISSIONER LANE: How should the
11 Commission factor the significant growth and demand in
12 the CMC market into its analysis? Hasn't this growth
13 and demand led to a significant recovery in the
14 industry sales and production volumes for CMC and a
15 corresponding improvement in its operating income
16 levels?

17 MR. HERAK: Well, it is correct,
18 Commissioner Lane, that there have been some overall
19 improvements in terms of the volume of CMC
20 requirements and also some commensurate improvement in
21 our sales volume, but what has not recovered is
22 pricing and profits.

23 Raw materials have increased very
24 substantially in the recent time and although the
25 aggressive behavior of the Respondents has temporarily

1 abated since the suspension of liquidation we have not
2 had recovery of profits and in the first quarter of
3 2005 on the same basis as what we have here our
4 profits are lower than any quarter of 2004 because of
5 the steep increases in raw materials and the other
6 factors.

7 Did that fully answer your question?

8 COMMISSIONER LANE: Yes. Now I have a
9 follow-up question. How should the Commission take
10 into account the fact that subject imports have lost
11 considerable market share during the period of
12 investigation? Doesn't this significantly undermine
13 your argument on existence of material injury?

14 MR. HERAK: I do not know the exact market
15 share of the Respondents since that's APO information.
16 I do know that our market share has improved a little
17 bit as I demonstrated in those graphs; however, we're
18 still not at the market share that we were prior to
19 the beginning of this aggressive dumping activity and
20 -- so I lost my place there.

21 MR. TELEVANTOS: Let me add I think the
22 issue at stake is the continuing aggressive pricing.
23 Despite higher costs the pricing from Respondents has
24 continued to decline and even though our market share
25 has somewhat recovered partly because of the markets

1 and partly because of our actions our profits are
2 declining and therefore the dumping actions continue
3 and there's no threat from this action.

4 Then we can only see that worsening,
5 probably market shares going back to eroding and
6 profitability going further down from its very low
7 levels of today. So there is a real threat of
8 enlarging the damage that we've seen today rather than
9 seeing it diminish.

10 MR. LEBOW: May I respond to that a bit,
11 Commissioner Lane?

12 COMMISSIONER LANE: Yes, you may.

13 MR. LEBOW: Our case is really that there
14 are two kinds of injury where there was a volume
15 affect early on with some profit degradation and
16 increased unit fixed costs and then price and profit
17 affects later on. Aqualon had the conscious decision
18 to try to take some market share back because they
19 just didn't want to be fading out of the business.

20 They could have maintained a high price and
21 made a lot on a very few sales, but their total amount
22 of money they made would have been very little so they
23 had to try to take some volume back. We think if you
24 look at the longer period -- which we think you really
25 should to get the full picture here from 2001 --

1 you'll see market share still hasn't recovered.

2 Even if you only look at the three year
3 period from 2002 on we think that there are many
4 indicia of material injury with the volume affect
5 early and the price and profit affect later on. As
6 noted, this is the top of the business cycle and the
7 company still is not making any money.

8 COMMISSIONER LANE: Thank you. On page 17
9 and 18 of Noviant's prehearing brief they wrote that
10 responses to the final phase questionnaires reveal
11 that purchasers of purified CMC rarely purchased
12 product on the basis of price alone.

13 Respondents also contend that questionnaire
14 responses from purchasers revealed that availability,
15 product consistency, reliability of supply and quality
16 were identified as being very important more often
17 than price.

18 However, starting on page 21 of Petitioner's
19 prehearing brief Aqualon states that the market is
20 price sensitive and price is the most important factor
21 in purchases. In light of these arguments, please
22 explain to me the importance of price to a U.S.
23 purchaser of purified CMC?

24 Long question, Mr. Chairman, what can I say.

25 CHAIRMAN KOPLAN: Go for it.

1 MR. KLETT: Commissioner Lane, this is Dan
2 Klett.

3 COMMISSIONER LANE: Yes?

4 MR. KLETT: I'd like to respond to that.

5 COMMISSIONER LANE: I'll tell you what.
6 Maybe I'll just let you answer that my next round so I
7 don't get in trouble here with my fellow
8 Commissioners.

9 CHAIRMAN KOPLAN: You're not in trouble.

10 COMMISSIONER LANE: Okay. I'll come back to
11 you. Thank you.

12 MR. KLETT: Fair enough.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Pearson?

15 COMMISSIONER PEARSON: Thank you, Mr.
16 Chairman. Permit me to extend my welcome to the panel
17 also. I always learn things in these hearings. It's
18 great. I think there was a reference to excess
19 capacity globally for the production of CMC.

20 Could you please elaborate on that and give
21 me some idea of how much excess capacity there might
22 be if indeed that's your position and when it came
23 online, and who built it, et cetera?

24 MR. HERAK: Based on information that's
25 publicly available from different market sources, some

1 consultants and also things which some of the
2 Respondents have published. The biggest increase in
3 capacity was in the 1999 to 2000 timeframe when
4 Noviant made very significant capital investments in
5 their European facilities.

6 There are many other producers of course
7 that are adding some capacity here and there as well,
8 but the capacity additions that they made at that time
9 were larger than our entire production capacity at our
10 Hopewell plant, so that was when there really became a
11 large imbalance between the supply and demand.

12 COMMISSIONER PEARSON: Relative to global
13 consumption of CMC do you have some idea how large
14 those capacity expansions were? Was it 10 percent of
15 global capacity that was added?

16 MR. HERAK: I could maybe try to give you a
17 more specific answer in the posthearing, but I think
18 approximately the capacity that they added at that
19 time was more than 10 percent, maybe approaching 20
20 percent of the global demand.

21 COMMISSIONER PEARSON: So then that's not an
22 insignificant amount.

23 MR. HERAK: That's correct. That's the
24 single largest facility for production of CMC in the
25 world which they have in Finland.

1 COMMISSIONER PEARSON: Is it fair to assume
2 that going back prior to the period of investigation
3 looking at the 1990s when the global economy was
4 fairly strong were we seeing year to year increases in
5 the consumption of CMC?

6 MR. HERAK: Well, the oil sector was very
7 cyclical, but for the other areas -- the food, and the
8 toothpaste and so forth -- there was kind of a gradual
9 growth.

10 These things grow somewhere near GDP or
11 sometimes around population as more and more
12 toothpaste is consumed, but in America people aren't
13 brushing their teeth more often so roughly around
14 population or a little above for the other
15 applications.

16 COMMISSIONER PEARSON: If the current
17 consumption growth continues how long would it be
18 before the excess capacity in the global market gets
19 used up and we see a tightening of the supply/demand
20 balance? Was that a year or two away or is it a lot
21 further than that?

22 MR. HERAK: It's difficult to speculate. It
23 depends a lot on particularly the demand and the
24 drilling which I don't think will continue at the same
25 pace that it has. If you project linear from the last

1 two years well then maybe you could use up all the
2 capacity within a few years time.

3 I think even in that most optimistic
4 scenario it would take several years to fill up
5 capacity and I don't believe that scenario is likely.

6 COMMISSIONER PEARSON: Well, I have a little
7 more experience than I wish with industries where a
8 company decides to expand capacity, and a new plant
9 gets built, and an old one gets doubled in size, and
10 all of a sudden there's a tremendous overhang in
11 production capacity, and you've got a bunch of product
12 looking for a home and the question is how does the
13 market absorb this?

14 My experience has been that especially when
15 capacity really gets over built that everybody in the
16 industry pays something for that. Are we seeing
17 evidence of global over capacity by observing price
18 reductions in other countries or are the low prices
19 something that are just a phenomenon here in the
20 United States?

21 MR. HERAK: I believe it's a phenomenon
22 that's not limited to the United States, but I think
23 the pattern in the U.S. was much more dramatic because
24 of the points that I made earlier and about the
25 activities of Noviant primarily. The price in the

1 U.S. is now lower than the price in Europe, but at one
2 time it was roughly equivalent or depending on the
3 exchange rate.

4 The price here has declined much more
5 significantly I believe than any of the other
6 geographies.

7 COMMISSIONER PEARSON: Aqualon exports some
8 product. Do you export some to Europe?

9 MR. HERAK: Well, we have a factory in
10 France, so the way that we do our sourcing is our
11 French CMC factory is primarily used to source the
12 European market and the Middle East Africa, and the
13 one in Virginia is used primarily for North, South
14 America and some limited exports to South America.

15 COMMISSIONER PEARSON: So we're talking kind
16 of NAFTA into South America, that type of market with
17 the Hopewell factory?

18 MR. HERAK: Primarily. There's a few grades
19 that we maybe only make at Hopewell and not at
20 European plants or they may be a little bit of
21 material going to Europe, but that's only the
22 exception not the rule.

23 COMMISSIONER PEARSON: Are you able to put
24 on the record pricing information for Europe to give a
25 sense of how the price movements in Europe might have

1 differed from those in the United States over the
2 period of investigation?

3 MR. HERAK: With respect to our own pricing
4 we should be able to provide that in the posthearing
5 brief.

6 COMMISSIONER PEARSON: Yes. Right.
7 Unfortunately, for this product we don't have a public
8 futures market where we have easy price discovery,
9 okay? This is much harder to discern.

10 Well, I would appreciate that because
11 obviously we don't look behind Commerce's margins, but
12 yet it seems that there may well be something going on
13 in the global marketplace for CMC that's having some
14 price effect that might be independent and severable
15 from whatever dumping might be occurring.

16 So that's kind of what I'm trying to
17 understand because it's clear that there's been
18 downward price pressure in the United States and I'm
19 just wanting to make sure I understand fully why
20 that's the case because the statutes don't allow us to
21 provide relief for a price reduction that isn't
22 dumped.

23 Given that Aqualon produces so many
24 specialized forms of CMC to meet individual customer
25 needs is it really appropriate to refer to this

1 product as a commodity?

2 MR. HERAK: Well, let me try that one. I
3 guess it depends a little bit upon one's definition of
4 a commodity.

5 COMMISSIONER PEARSON: How about corn or
6 soybeans?

7 MR. HERAK: I don't think it's quite in the
8 same category as corn or soybeans, but when we write a
9 purchasing agreement with our customers they insist on
10 having the word *commodity* on there.

11 COMMISSIONER PEARSON: Really?

12 MR. HERAK: Many of them do, but I think
13 it's a little bit different than corn or soybeans in
14 that there are a broad range of products and there are
15 some separate specifications. In terms of the
16 fungibility of product from one supplier to another I
17 think it has many of the similar characteristics of
18 commodity.

19 The products are viewed by the customers as
20 predominantly or exactly the same and then they make
21 the decision solely based on price. I would like to
22 make an example specifically for the oil drilling
23 sector where we see the very low prices. I show you
24 an example of a bag.

25 This is a bag for one of our customers.

1 There are bags that look almost exactly like this that
2 are sitting in the factory of Noviant, okay? So we're
3 taking product, we're putting it into a bag -- so is
4 Noviant -- and then that customer of ours is
5 representing it as equal, identical material to their
6 end customers.

7 They're not making any distinction between
8 where the source of origin was for that material or
9 the supplier which produced it.

10 COMMISSIONER PEARSON: How many specific
11 formulations of CMC does Aqualon sell to customers? I
12 have the impression from you're saying that it's
13 really quite a few.

14 MR. HERAK: Yes. As I mentioned earlier
15 there are roughly 15 families of product. So let's
16 take an example of we'll have a specification which
17 will be like 7-L -- seven will be the amount of
18 substitution, *L* means low viscosity.

19 So I have the 7-LT which will be for
20 technical that's not for food, we'll have a 7-LF which
21 needs to be 99.5 percent purity to be for the food,
22 then we'll have like a 7-LCT where *C* stands for a
23 coarse particle, then we'll have another one that's
24 for a fine particle.

25 So there are many variants from that same

1 family, but it's still based on the same underlying
2 chemistry. In fact, some of the samples I have you
3 may look at later will show you just some of the
4 different particle sizes that we have and so forth, so
5 there are lots of subsets.

6 Then some customers for example will say our
7 specification is 400 to 800 units for viscosity.
8 There may be a customer that says I really need
9 something a little bit narrower than that, can you
10 make something that's from 500 to 800, if it's between
11 400 and 500 it doesn't work.

12 So if you call that a separate product or a
13 separate grade I should say there are a lot of those
14 distinctions where you're just changing things
15 slightly or selecting a certain lot for a customer,
16 but it's still the same underlying product.

17 MR. TELEVANTOS: Mr. Pearson, I was going to
18 add that all of our competitors however can produce
19 the same grade, so a customer can go to us and ask us
20 to do this grade or can go to Noviant and get exactly
21 the same result.

22 COMMISSIONER PEARSON: Right. I just would
23 comment that it looks to me like this is an industry
24 where what you produce is very much driven by specific
25 customers needs and that it seems to me that you're

1 working quite closely at least with a number of the
2 customers to figure out what type of CMC will really
3 meet their requirement and then you go ahead and
4 produce it.

5 MR. TELEVANTOS: That's correct.

6 COMMISSIONER PEARSON: Thank you very much.

7 CHAIRMAN KOPLAN: Thank you, Commissioner
8 Pearson.

9 Mr. Klett, sometimes there's a bit of a
10 benefit to going last in the questioning order. I've
11 checked with staff as a follow-up to Commissioner
12 Miller's question to you with regard to whether the
13 data that we had for 2001 is comparable to the data
14 that we have today.

15 I know your response was that you thought
16 that it was, including imported data.

17 MR. KLETT: Subject imports. Correct.

18 CHAIRMAN KOPLAN: Right. I've checked with
19 staff and they don't agree that the data for 2001 is
20 comparable to the data for the later period.

21 Staff was able to obtain additional imported
22 data between the prelim and that preliminary staff
23 report was July 19, 2004, and our final status report
24 which for this hearing was April 28, 2005, so the
25 results would be different with regard to volume and

1 resulting market share for 2001. It would not be
2 comparable in that respect between the prelim and now.

3 Now, it is true that when we did the prelim
4 the source was listed as data from Commission
5 questionnaires. The fact is we got more information
6 in, so I don't know how you can reconcile that, but I
7 can't simply pick up the numbers that I'm looking at
8 in the earlier staff report -- the 2001 -- and just
9 sew them on to the current one.

10 I wanted to make that clear to you and I
11 think you might have to get together with staff and
12 try and figure out how does that get reconciled
13 because it's not quite that simple at all.

14 MR. KLETT: I appreciate that, Chairman
15 Koplan, and I will attempt to revise our 2001 numbers
16 to include the revisions that were made subsequent to
17 the prelim staff report. I think though that the
18 general trends with respect to the substantial
19 increase in subject import market share will remain
20 the same even with the revised data.

21 CHAIRMAN KOPLAN: Well, I don't have a basis
22 to respond to you on that at this point in time. I'm
23 interested in what the results would be.

24 MR. KLETT: I appreciate that.

25 CHAIRMAN KOPLAN: Thank you. Mr. Klett I'm

1 going to stay with you with my next question.
2 Aqualon's prehearing brief at pages 2 and 3 states
3 that "The low margins that Aqualon now earns have led
4 to significant disinvestment in capital that also
5 threatens the future of domestic production."

6 You cite as an example the closure of your
7 plant producing the import chemical monochloroacetic
8 acid -- MCA. Then on page 44 you assert that
9 "Moreover, if Aqualon was still producing its own MCA
10 its cost of goods sold would be higher and profits
11 lower."

12 You argue at page 48 that the one time \$3.6
13 million write-off of the MCA plant should be included
14 in the overall analysis of Aqualon's financial
15 condition. That to exclude this charge would be to
16 account for the decline in cogs without taking into
17 account its full effect on Aqualon.

18 However, Respondent Noviant argues at page
19 38 of their brief that it is clear from the data
20 contained in the domestic producers' questionnaire
21 response that the decision to close the MCA facilities
22 was simply driven by the fact you could purchase MCA
23 for less than your cost of production regardless of
24 volume not related to subjected imports and should be
25 disregarded in our financial analysis.

1 Could you respond to that?

2 MR. KLETT: I think there's two issues here
3 in that question. The first issue, actually going to
4 the second part of your question is the driver for why
5 the MCA plant was shut down and I think I'll let Mr.
6 Herak address that.

7 The first part of the question I'll address
8 and that is how you --

9 CHAIRMAN KOPLAN: What was shut down?

10 MR. KLETT: Pardon? The shut down of the
11 MCA facility.

12 CHAIRMAN KOPLAN: Okay.

13 MR. KLETT: The first part of your question
14 is how do you calculate profitability with or without
15 the MCA shut down? If you include the MCA shut down
16 as an impairment cost you get a negative operating
17 profit.

18 My point was that if you exclude the MCA
19 asset impairment charge you can't just strip out that
20 asset impairment charge and recalculate your operating
21 profit because by reason of stripping out the MCA
22 impairment charge or if you had continued to produce
23 with the MCA plant your costs would have been higher
24 because the production cost for MCA was higher at that
25 time than the purchase cost of MCA.

1 So the scenario that if the MCA plant had
2 not been shut down, there needs to be another
3 adjustment to the cost structure rather than just
4 ignoring the MCA impairment charge and that was the
5 point I was trying to make really to the first part of
6 your question and we provided that calculation in our
7 brief.

8 In terms of the rationale for the MCA shut
9 down, I will let Mr. Herak and Mr. Televantos address
10 that, please?

11 CHAIRMAN KOPLAN: I know what you had in
12 your brief. I appreciate that.

13 I would be interested though in the other
14 part of that question, Mr. Herak. What drove it?

15 MR. HERAK: Chairman Koplan, in a make
16 versus buy analysis -- I'm sure you're familiar with
17 that -- you look at your cost for producing and of
18 course the cost of buying. The cost of producing is
19 very much volume related because you have a certain
20 fixed cost for people and so forth.

21 So we looked at that, we knew at the present
22 time that it was advantageous for us to shut down the
23 MCA and buy based on the volume at that time. What we
24 also looked at is what were our volume expectations
25 for the CMC business and hence how much MCA would we

1 need going into the future.

2 Given the cloudy future because of the
3 dumped imports we were not that optimistic about
4 growing our sales and thus I would say that's a
5 contributing factor to the decision to stop producing
6 our own MCA because we're looking at the future, but I
7 can't say that is the only reason that we stopped the
8 production of MCA.

9 CHAIRMAN KOPLAN: I appreciate what you're
10 saying. Let me come back to you, though.

11 MR. HERAK: Okay.

12 CHAIRMAN KOPLAN: Do you agree then with
13 their allegation that you could purchase MCA for less
14 than your cost of production regardless of volume? I
15 thought I heard that as part of your response.

16 MR. HERAK: No. It's not regardless of
17 volume. It's very volume dependent.

18 At the volume that we had it was
19 advantageous to stop producing, but with some growth
20 in the business it would be possible with less
21 pressure from the imports to grow the volume to a
22 level where you would be at a break even point and
23 then even at a break even point you have some inherent
24 advantage to being a producer as opposed to a
25 purchaser because you have more security, you have

1 supply and you also are a little bit less subject to
2 some of the market ups and downs.

3 CHAIRMAN KOPLAN: Thank you. I appreciate
4 that.

5 Mr. Televantos and Mr. Lebow, at page 18 of
6 your prehearing brief it is alleged that "While
7 Noviant has argued that it cannot supply food grade
8 CMC for food and personal applications from its
9 finished plant due to the absence of GMP
10 certification, Noviant's CMC plant in Finnish is a
11 world-class operation."

12 "Thus, there can be little doubt that
13 Noviant could take the steps necessary to obtain GMP
14 certification if need be." You claim that there is
15 little difference in the production techniques
16 required.

17 Could you quantify for me the cost involved,
18 the length of time to add such production techniques
19 and the time and process required to secure GMP
20 certification if they chose to do so? Based on
21 Aqualon's own experience could you document that
22 response in your posthearing submission?

23 MR. LEBOW: We'd be happy to do that and may
24 Mr. Herak answer that directly now to the extent that
25 he can?

1 CHAIRMAN KOPLAN: Absolutely. Yes.

2 MR. HERAK: Although I've never visited or
3 seen the Finnish Noviant facility I can speculate on
4 what it may take for them to obtain a GMP.

5 CHAIRMAN KOPLAN: So you're not responsible
6 for the statement in the brief that said that their
7 plant's a world-class operation?

8 MR. HERAK: Well, I believe it is a world-
9 class operation. It is the largest CMC production
10 facility in the world and of the major producers it
11 has the newest assets and Noviant has made assertions
12 that they can highly tailor and engineer products for
13 a variety of customers and I believe that they are a
14 capable quality supplier of CMC.

15 To produce a product for the food industry
16 to meet a GMP standard is not technically difficult
17 whatsoever. You only need to ensure that you have a
18 very clean operation, that it's free of contamination
19 and that you have certain procedures and safeguards to
20 make sure that contamination of the CMC is avoided.

21 We have the section on certification, but
22 it's a self-declaration. We declare that we're GMP as
23 do all the Respondents -- including Noviant -- in two
24 of their three plants. It's my personal belief that
25 they could obtain it quite easily for Finland if they

1 were motivated to do so.

2 I don't think it would take years. It would
3 take on the order of probably months and not that many
4 months in my estimation and also based on my
5 conversations with our regulatory affairs experts in
6 Aqualon.

7 CHAIRMAN KOPLAN: I appreciate that
8 response.

9 Also, Mr. Lebow, I look forward to the
10 details I asked for. If he gets together with your
11 regulatory person perhaps that can be more detailed
12 for me for the posthearing.

13 MR. LEBOW: We'd be happy to take care of
14 that.

15 CHAIRMAN KOPLAN: Thanks a lot.

16 Commissioner Miller?

17 COMMISSIONER MILLER: Thank you, Mr.
18 Chairman.

19 Let me actually start by continuing on
20 something sort of related to the discussion you were
21 just having with the Chairman. Mr. Herak, you said in
22 your initial testimony that Noviant presents itself I
23 think as one company was the way you put it.
24 Elaborate for me a little bit if you could in what you
25 meant by that.

1 How do you compete with Noviant in the U.S.
2 market? Are you aware if you're competing against
3 imports from one country versus another country or do
4 you always just see Noviant? Do you have any
5 impression as to whether your customers know whether
6 they are purchasing from one country or the other?

7 MR. HERAK: I would characterize it,
8 Commissioner Miller, how you said in the latter. That
9 we generally don't know which country that we would be
10 competing against.

11 We can make some type of guesses based on
12 what Noviant has published about which factories
13 specialize in which products, but generally when I
14 hear from a salesperson that there's a competitive
15 situation with Noviant or when I talk to customers
16 directly it's always referenced there's a competitive
17 material, it's from this supplier, this supplier, from
18 Noviant, but not from Noviant Finland, not from
19 Noviant Holland, it's just Noviant.

20 I'm sure that the Respondents can answer
21 this better than I can, but I believe they're the
22 exact same salespeople that are representing the
23 entire portfolio of products from those facilities and
24 they don't have dedicated salespeople or distributors
25 that specialize only in material from one of their

1 three facilities.

2 COMMISSIONER MILLER: I appreciate that and
3 I will put the question to them this afternoon, but I
4 wanted to get your perception of it as when you
5 compete in the marketplace. I've been thinking a
6 little bit about some of the issues related to pricing
7 here.

8 Actually, let me start with asking the
9 question in a very simple way. You've said that
10 Noviant was underselling you, that they continued the
11 aggressive pricing behavior throughout 2002 to 2004.
12 Then why didn't they gain market share? Why in that
13 period of time do we see you as gaining market share?
14 It's not usually what I expect in a market.

15 MR. HERAK: Commissioner Miller, the drop in
16 our market share from 2001 to 2002 as I explained was
17 the result of the very aggressive pricing and we did
18 lose very significant share and the prices dropped
19 very substantially, but we knew that the only way we
20 could continue a business was to have more volume and
21 therefore we did lower our prices very significantly
22 in many of the major accounts and I think when the
23 prices were comparable -- there were some customers
24 maybe that had deserted us when the price cap was too
25 high, but if the price was similar maybe they had some

1 loyalty or allegiance, they preferred to buy from
2 Aqualon given a relatively similar price.

3 In some cases as Mr. Televantos mentioned
4 earlier the instructions that we gave to our
5 salespeople were to lower the price the minimum amount
6 necessary to try to regain the volume. So generally
7 we would hope that we target a price that is at or
8 maybe even slightly higher if there's some loyalty
9 factor from the customer to regain the business.

10 In some cases I imagine that we probably
11 priced even below what the Noviant price was in order
12 to get the business back. So I don't know if that
13 answers your question.

14 COMMISSIONER MILLER: Well, again I'm trying
15 to in part see how I can look just at our period of
16 investigation and see the injury that you attribute to
17 your competition with the subject imports. I
18 understand the volume lost, I understand the story as
19 a whole as it begins in 2001.

20 We have some data problems with looking at
21 2001, so I'm trying to understand if I can see it just
22 as the 2002 to 2004 period and I was hearing you say
23 that you considered their pricing to be still
24 aggressive, or underselling you or whatever and I know
25 Mr. Klett will point that out in the data to me

1 whenever he can, but your story just was a little bit
2 different.

3 It's like well, we lowered the price -- I
4 understood in order to regain your volume to a point
5 where maybe we won't see. That would suggest we
6 wouldn't see that much underselling. You came down as
7 much as you had to to regain that business is what
8 you're saying.

9 MR. HERAK: That was what our intention was.
10 There may be customers where the price was just so low
11 that we just left it for them.

12 COMMISSIONER MILLER: Right. Right.

13 MR. TELEVANTOS: It goes a little beyond
14 that. I think that perhaps it has been action by
15 Respondents, especially Noviant, whereby when we were
16 trying to regain business they lowered their price
17 even more to retain it and that's why there's a gap
18 overall between us and them.

19 So we have regained because we didn't go as
20 low as Noviant or Respondents were willing to go. So
21 the gap remains, but it is smaller. So as we were
22 bringing price down there was further erosion by
23 Respondents and in some cases that erosion prevented
24 us from getting more of the market back, but that gap
25 still exists.

1 COMMISSIONER MILLER: Can I ask, this chart
2 that you put up you attribute the source -- because we
3 know almost everything, every number in our record is
4 confidential we dance around this discussion a lot --
5 but you say here that this is showing Aqualon's market
6 share based on publicly available apparent consumption
7 data and Aqualon's shipments.

8 Can you elaborate what the source of this
9 information is?

10 MR. HERAK: The total apparent U.S.
11 consumption was from the staff report.

12 MR. LEBOW: The public version.

13 MR. HERAK: Right. The public version.

14 COMMISSIONER MILLER: I didn't think it had
15 any numbers public in it, but maybe it had that one.
16 Okay.

17 MR. HERAK: It was in the public version of
18 the staff report that I received. Then I took the
19 sales from our Hopewell plant which we submitted in
20 our questionnaire and I just did the division.

21 COMMISSIONER MILLER: Okay. Now, let me go
22 back to continue a bit on our discussion earlier about
23 Proctor & Gamble and the internet auctions that were
24 in 2001. What's happened since in terms of those
25 accounts?

1 You told us about that publicly, so I assume
2 you're prepared to talk a little bit more publicly,
3 but at what point you want to put it into a
4 confidential submission in the posthearing brief
5 that's fine. Are those contracts renegotiated? Did
6 they do it again? Can you elaborate any further?

7 MR. HERAK: I'll answer to the best that my
8 memory allows. Today we have zero sales at P&G for
9 the paper towel application. According to my
10 salespeople, Noviant holds all of that business. The
11 food business was sold. It was actually a product
12 called Sunny Delight.

13 It's kind of an orange drink more targeted
14 toward children. That was sold to some other company,
15 but we do not I believe have any of that business
16 today. Then in the oral care area we still are
17 retaining a certain proportion, I believe it's less
18 than 50 percent of the total oral care between the
19 toothpaste and denture adhesive for P&G today.

20 The prices have decreased through the
21 period. I can't remember the exact numbers.

22 COMMISSIONER MILLER: Were there subsequent
23 internet reverse auctions by P&G during the period
24 that we have investigated?

25 MR. HERAK: No. I'm not exactly sure why

1 they changed their method of deciding the purchasing,
2 but they seem to prefer more of a negotiation process
3 with some bidding and discussions with their
4 purchasing people now and I'm not sure why they've
5 made that shift.

6 COMMISSIONER MILLER: Mr. Klett, if I could
7 go to you for a minute? I know you've done a lot of
8 analysis of the pricing data in your prehearing brief,
9 but when I look at our pricing data and I try to just
10 understand how informative it is it has struck me that
11 within product categories we have a fair amount of
12 variety in terms of differences in the pricing levels
13 between different products.

14 Sometimes you see that and you just wonder
15 whether you have a comparable product in the pricing
16 series or what's going on. Can you help me on that?

17 MR. KLETT: Sure.

18 COMMISSIONER MILLER: I know you addressed
19 some of the comments by Noviant in your initial
20 testimony, but besides that. You understand my
21 question?

22 MR. KLETT: I understand and I think that
23 you do have some variances in the prices and variances
24 in the magnitudes of underselling product by product.

25 For example, in the oil field generally

1 margins of underselling are lower and I think that
2 goes to the point that Mr. Herak made that that is a
3 product where the customer has a private label
4 specification that each supplier has to meet so that
5 in a sense we are saying this is a commodity.

6 The oil field is probably the most commodity
7 of the different specifications and that's consistent
8 with the fact that you see tighter prices or more
9 comparability between domestic and import prices for
10 that product as compared to the food grades or the
11 other nonregulated grades where you have greater
12 margins of underselling.

13 I will say that there may be, and when
14 you're comparing producer and importer questionnaires
15 you have a mix of customers so that you could have
16 some of the distinctions or margins of underselling
17 being a function of just a different customer mix.

18 So I looked at the purchaser questionnaires
19 purchaser by purchaser to attempt a control for that
20 and still found that by and large there was
21 underselling. When you're looking at customers if you
22 have customer X that's buying a nonregulated grade
23 from Noviant and a nonregulated grade from Aqualon in
24 the same quarter, to me that's pretty much an apples
25 to apples comparison.

1 When I did the analysis on that basis which
2 is shown in Exhibit No. 3-C of our brief there was
3 still underselling. So I won't dispute that when you
4 compare producer and importer questionnaires there can
5 be some customer mix issues that may explain some of
6 the divergences, but when I controlled for that I
7 still found underselling.

8 I think in your staff report the aggregation
9 of the purchaser questionnaires, by and large
10 underselling predominates as well.

11 COMMISSIONER MILLER: I appreciate that.
12 Red light's on, so thank you. I appreciate your
13 answers.

14 CHAIRMAN KOPLAN: Thank you, Commissioner.
15 Commissioner Hillman?

16 COMMISSIONER HILLMAN: Thank you. If I can
17 follow-up to make sure I understand some of the
18 pricing issues as well? Let me just start with the
19 issue of do the prices for the product sold for a
20 given grade or for a given end use affect in any way
21 the prices for a different grade or a different end
22 use?

23 If P&G is buying for use in two or three
24 sectors are they expecting reasonably comparable
25 prices in each of those three? How much of the price

1 in the food use bleeds over into the price for paper
2 or dental care? I assume oil field is a different set
3 of players.

4 Mr. Herak?

5 MR. HERAK: Commissioner Hillman, I would
6 say that in the example of P&G where they're buying
7 CMC in different applications of course for them it's
8 very transparent what the prices are in one industry
9 versus another and so they generally do use that
10 knowledge to try to achieve a better price across all
11 of the areas.

12 I would say traditionally there would be
13 some price differences in different sectors. For
14 example, the paper applications generally are a little
15 bit lower price compared to some of the food and the
16 toothpaste and so I think that the data would reflect
17 that, but if you're a company that's buying CMC for
18 food application and you have no knowledge of what the
19 price is for the paper you wouldn't have that
20 information and therefore you may not negotiate as
21 well as what P&G could having a broader perspective on
22 the total CMC market.

23 COMMISSIONER HILLMAN: I guess I'm trying to
24 understand what general portion of the market is
25 situated like P&G where they're buying in more than

1 one segment versus what portion are only in food
2 service so they don't have that knowledge.

3 MR. HERAK: I think that the majority are
4 only buying in one sector. I think P&G is more the
5 exception than the rule just because they're so large.
6 I can't think of any other customer off the top of my
7 head right now that would fit that same category.

8 There may be some, but it's not a large
9 proportion of the total customer base.

10 COMMISSIONER HILLMAN: Then you described in
11 your opening testimony the fact that most of the sales
12 to the end users are typically on an annual contract
13 negotiated at the end of the year.

14 MR. HERAK: Correct.

15 COMMISSIONER HILLMAN: Those contracts
16 specify exactly the grade, the volume and the price or
17 how are they typically negotiated?

18 MR. HERAK: That would be the most typical,
19 that they would have the volume, the price and the
20 specific grade.

21 There may be times when there are not firm
22 volume commitments when it's just the price and the
23 grade and it's for open-ended volume, but generally
24 when we write contracts we prefer that if we're making
25 a commitment to supply a product at a certain price

1 that our customer is also committing to buy it for
2 that price.

3 I would also comment that it's mostly annual
4 contracts. They're usually on a calendar year, but
5 sometimes for whatever reason there can be a fiscal
6 year where they start in the second quarter or third
7 quarter.

8 COMMISSIONER HILLMAN: Now, are there ever
9 price either escalators or de-escalators geared to
10 changes in raw material costs or other things built
11 into the contract?

12 MR. HERAK: Sometimes there are.
13 Historically this was not a very common practice
14 because for a while there was relatively stable raw
15 materials.

16 I don't know about the others, but given the
17 very uncertain pricing for some of our key raw
18 materials with a lot of changes in the basic commodity
19 prices in the past year we are now trying to include
20 those type of clauses -- escalators and so forth --
21 when possible.

22 COMMISSIONER HILLMAN: When there are
23 changes in demand in one sector as opposed to the
24 other as we've seen in this period where all of a
25 sudden oil field goes up how do you tend to respond to

1 that? Are you trying to shift out of food or other
2 and into the area where there's hotter demand or
3 you're simply trying to produce more?

4 Typically, how do you address changes in
5 demand within each of the market segments?

6 MR. HERAK: Well, with respect to the very
7 significant increase in the oil demand our first goal
8 is to make more, and supply the market and not have to
9 shift it from somewhere else.

10 In the recent period, if the total
11 opportunities for sales exceed your current production
12 capacity then there's certain business that you may
13 not bid on or you'll bid a price where you are maybe
14 not expecting to win the business.

15 COMMISSIONER HILLMAN: I appreciate that.
16 In terms of this shut down of the facility to produce
17 the input chemical you said that if volume was large
18 enough you would look at restarting it. What is its
19 current condition now? Is it literally just moth
20 balled or if it's somewhat corrosive product can you
21 just let it sit there and not have it -- I'm just
22 curious whether you can --

23 MR. TELEVANTOS: Yeah. You must have
24 knowledge of the chemical industry. The unit is
25 constructed of materials that are corrosion resistant

1 so it is in excellent moth ball shape and we will
2 retain it in that shape until we decide that it's
3 either going to be restarted or permanently stopped.

4 One of the reasons that we had to shut it
5 down was because it required some more capital for it
6 to be in an operating mode for the future both to
7 supply the quantities, but also the quality and other
8 needs and that was part of the decision to outsource
9 for now from another supplier that had bigger scale.

10 COMMISSIONER HILLMAN: If there is other
11 information -- I know we have some data on the record
12 as to this issue of why the decision was made to shut
13 this facility down -- if there is anything further
14 that could be added that would address these
15 additional points that are now being I think it would
16 be helpful, Mr. Lebow, okay?

17 Then I guess two kind of more legal
18 questions for you. One, we've heard this testimony
19 that Noviant behaves in essence as one entity in the
20 U.S. market. I'm wondering if you could help brief
21 the issue of how the Commission should take that into
22 account either in its cumulation decisions or
23 otherwise.

24 Should it matter to us as a legal matter
25 that we're hearing this testimony that they behave as

1 one entity given that the statute obviously generally
2 directs us to look at each subject country as such, as
3 a country rather than this notion of looking at it as
4 one selling arm in the U.S.?

5 So if there is any precedent that you would
6 point us to or any other way in which you think how it
7 is that we should take into account the fact that
8 there is a single parent company connected to three of
9 the subject countries I would welcome any analysis on
10 that point.

11 MR. LEBOW: You won't be surprised,
12 Commissioner Hillman, to hear that we've thought about
13 that a bit already.

14 We think that there is some precedent which
15 we'll put in our brief, but also generally going to
16 the idea that the Commission's cumulation analysis
17 must see if the imports from given companies compete
18 with each other and with the domestic-like product,
19 and we think that there is analysis and argument to be
20 made both from precedent and from the special facts of
21 this case to support your taking that into account in
22 your cumulation analysis and we'll set that forth in
23 our posthearing brief.

24 COMMISSIONER HILLMAN: Because obviously
25 this arguably could not be the typical cumulation

1 scenario if in essence Noviant can say okay, Finland,
2 you make this product and sell that, Sweden, you do
3 this, Netherlands, you do that. My question is do we
4 have enough on the record to know that's actually
5 what's going on?

6 Obviously, we can ask Respondent some of
7 this as well, but then in theory you're conceding that
8 there isn't the normal overlap and on the other hand
9 because it is controlled by one parent it's this
10 question of whether it has the same kind of hammering
11 affect that we would look for in a normal cumulation
12 analysis.

13 That's what I'm wanting you to take a look
14 at.

15 MR. LEBOW: Understood, though I want to
16 make clear on the record we are not conceding that
17 there is not cumulation under normal standard and we
18 take issue with the methodology Noviant used to create
19 the so-called numbers and percentages of overlap.

20 COMMISSIONER HILLMAN: I do appreciate that.
21 Then I guess the next question is going to the heart
22 of the volume issue which you obviously heard raised
23 in the Respondent's testimony. If the Commission were
24 to decide that we're looking at this case in the
25 traditional three years -- so we're not looking at

1 data in 2001 -- I'm trying to make sure I understand
2 what is the volume argument.

3 I understand your issue on price and you're
4 arguing a lot about what happened to prices in this
5 period, but when I look at again the market
6 consumption is way up, arguably Aqualon is getting a
7 good chunk of that increase in consumption in terms of
8 increased production, increased sales volumes, all of
9 the increases we've talked about -- whether its
10 getting "its fair share" of the increase or not is
11 maybe a debatable point -- but if that's all we're
12 looking at are we saying that the import volume was in
13 fact significant or are you basically saying this is
14 fundamentally a price case?

15 MR. LEBOW: We're still saying the import
16 volume is significant. Again, from the public numbers
17 that Mr. Herak has estimated, we're looking at a very
18 substantial import share of subject imports in the 50
19 percent range. That being the case, just from a
20 supply and demand economics factor alone, that volume
21 has a real impact on the U.S. industry, the fact that
22 there is such a large share of imports in the United
23 States.

24 And there is Commission precedent that the
25 volume in and of itself when it is so high can be a

1 "volume effect" even though the volume, the import
2 volume share, might be decreasing. Now I have to be
3 careful what I say on the public record, but there is
4 a lot of volume going on there.

5 COMMISSIONER HILLMAN: Okay. Well, again,
6 if you can brief this issue --

7 MR. LEBOW: Sure.

8 COMMISSIONER HILLMAN: -- given the trend in
9 the volume market share and the degree to which the
10 U.S. industry, like I said, is increasing on the
11 volume side, how does that add to a significant volume
12 under our analysis, I'd appreciate it.

13 MR. LEBOW: All right. We will do that.

14 COMMISSIONER HILLMAN: Thank you.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.

16

17 Commissioner Lane?

18 COMMISSIONER LANE: Mr. Klett, I hope you
19 remember that long question.

20 MR. KLETT: Actually, I did. I took some
21 notes.

22 COMMISSIONER LANE: Okay. So, briefly,
23 what -- well, I'm going to summarize the question --

24 MR. KLETT: Okay.

25 COMMISSIONER LANE: -- which is, could you

1 please explain the importance of price to a U.S.
2 purchaser of purified CMC?

3 MR. KLETT: Yes. I think the context of
4 your question was Noviant's brief that customers don't
5 buy on price alone, and they specified four particular
6 non-price factors listed by purchasers as very
7 important to support that premise, and it's Exhibit
8 Slide 14. And I'd just like to make a couple of
9 observations.

10 If price alone were the determining factor
11 for purchasers, I'd expect to see only the blue hash-
12 marked bars and not the solid red or the solid green.
13 So I think it is true that there are non-price factors
14 in the market that distinguish to some degree Noviant
15 and Aqualon, but you have that in every case.

16 And I think the important point is that,
17 with respect to these non-price factors,
18 overwhelmingly purchasers reported U.S. and Noviant
19 product to be comparable, so that, notwithstanding
20 customers saying these are important non-price
21 factors, if customers also say they're comparable,
22 U.S. and imports are comparable with respect to these
23 factors, then I don't think this is an important
24 distinction between Noviant and Aqualon. And then
25 price becomes a more important factor.

1 COMMISSIONER LANE: Okay. Thank you.

2 I'd like to go next to your chart on page 19
3 which sets forth the CMC price trends, and I have
4 several questions. What data does the chart
5 represent? Is it the weighted average of all pricing
6 products and the weighted average of imports from all
7 subject countries?

8 MR. KLETT: Commissioner Lane, these graphs
9 were just general representations of trends. They're
10 not plotting actual data. But I do think they
11 represent the actual data in the sense that if you
12 look at the pricing products over this period,
13 Aqualon's prices fell at a faster rate than import
14 prices, and also it's accurate to the extent that, on
15 average, you had more underselling than overselling.

16 So I'm not -- the lines don't reflect actual
17 data. It's a representation of what we believe was
18 going on in the market.

19 COMMISSIONER LANE: Okay. Then you answered
20 my next question, which was I was going to ask you for
21 the actual data. So that is really irrelevant to this
22 chart, I mean, since you just were doing trends and
23 not based upon real data.

24 MR. KLETT: That's correct.

25 COMMISSIONER LANE: Okay.

1 MR. KLETT: But I -- that's correct.

2 COMMISSIONER LANE: Okay. Can you please
3 explain your view of the importance of the
4 implications of declining margins of underselling that
5 are largely explained by declining U.S. producer
6 prices?

7 MR. KLETT: Sure. I mean, I think that's
8 what this graph represents, and the margins of
9 underselling from your data actually did decline over
10 the POI. And the reason for that is that, after
11 having lost market share, Aqualon decided it had to be
12 more aggressive with respect to price to gain back the
13 volume that it lost in 2002, so that, on average, the
14 price gap closed and you had decreasing margins of
15 underselling.

16 I mean, Respondents seemed to indicate that
17 that in and of itself shows the lack of a causal link
18 between lower prices for Aqualon and the imports, but
19 I think that just reflects -- is consistent with our
20 story with respect to what was going on in the market
21 over this period.

22 COMMISSIONER LANE: Okay. Thank you.

23 Is it true that you have been seeing an
24 increasing amount of competition from Chinese
25 producers of CMC in the market?

1 MR. HERAK: I'll answer that, Commissioner
2 Lane.

3 COMMISSIONER LANE: Okay. Thank you.

4 MR. HERAK: Based on the Census data and
5 also the information that we have from the marketplace
6 based on our contacts with the customers, the Chinese
7 still represent a very, very small volume of the total
8 U.S. domestic market. There is some small increase,
9 but it's from a very low base. I believe, based on
10 the Census data, it's on the order of just a few
11 percent of the total U.S. market.

12 The activity that we've seen so far has
13 seemed to be concentrated in the oil drilling sector.
14 To my knowledge, we haven't seen any significant
15 penetration or activity in the food or paper or
16 personal care areas. So a little bit of activity in
17 the oil drilling area.

18 COMMISSIONER LANE: Would it be possible for
19 Aqualon or any other international producer of
20 purified CMC to supplement their own purified CMC
21 product with small amounts of a less expensive crude
22 CMC to compete on a price basis against lower priced
23 competition?

24 MR. HERAK: Theoretically, it would be
25 possible to blend purified CMC with a crude CMC to get

1 a lower cost product because obviously the crude
2 material is much lower cost.

3 I believe that for the majority of the
4 applications, that product would not be fit for use
5 for the customers. It's possible, however, there
6 could be situations where that may be an effective
7 strategy. But, to my knowledge, that's not a
8 significant issue in the market today.

9 COMMISSIONER LANE: Okay. Mr. Televantos,
10 Respondents contend that Aqualon's poor management
11 decisions were primarily responsible for Aqualon's
12 recent financial struggles. Please explain why you
13 feel it was the influence of subject imports and not
14 mismanagement that led to Aqualon's troubles.

15 MR. TELEVANTOS: Let me start by saying, of
16 the eight business units that I manage, the other
17 seven business units are doing extremely well, and
18 that's an indication of good business management.

19 Second comment is that, when you saw the
20 precipitous loss of business and pricing between 2001
21 and 2002, I don't think we had a lot of other options
22 in our hands and that we regained business, and even
23 today, after the regain of business, we continue to
24 enjoy higher average price than subject imports, so
25 that we've been able to get improved profitability,

1 albeit from a very low base without underselling the
2 imports.

3 So the combination of those facts I think
4 speaks to the conclusion that we have managed the
5 business in the most optimal way during this difficult
6 period.

7 COMMISSIONER LANE: In your opening remarks,
8 you said that Aqualon was considering expanding its
9 Hopewell facility if this case goes affirmative I
10 think is basically what you said. If Hopewell is
11 expanded to produce more CMC, will more employees be
12 hired or will the existing employees just step up
13 production?

14 MR. TELEVANTOS: As Mr. Herak indicated,
15 during this difficult period, we did not invest to
16 maintain our preexisting capacity and we allowed some
17 of the assets to be mothballed to the tune of about 20
18 percent reduction in capacity. And it's this 20
19 percent reduction in capacity that we would reengage
20 if the response from the Commission was affirmative,
21 and it would include some additional staffing to be
22 able to operate those additional assets.

23 COMMISSIONER LANE: Okay. I have one more
24 question, and forgive me if it's in the record
25 someplace or you've already answered this. But

1 explain to me how you make CMC that goes into food
2 products and into oil drilling for the oil drilling
3 field also. I mean, at some point, do you separate,
4 or what happens?

5 MR. TELEVANTOS: Each batch that we make is
6 in fact separated at the end. So we have a big
7 reactor, a big vessel we process it through, and then
8 it goes into a separate bin, as we call it. So each
9 batch, not just between food grade and oil field, but
10 each batch of product can be separated. And that's
11 how we separate oil field from food grade from all the
12 other grades. It's that simple.

13 COMMISSIONER LANE: And you don't get them
14 mixed up?

15 MR. TELEVANTOS: We certainly do not get
16 them mixed up.

17 COMMISSIONER LANE: Okay. Thank you.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 Commissioner Pearson?

20 COMMISSIONER PEARSON: Mr. Lebow, in Mr.
21 Clark's opening statement, he characterized some
22 conditions of this case, talking about market shares
23 and so on, and indicated, if I understood him
24 correctly, that he knew of no precedent of a case
25 based on similar facts in which the Commission had

1 ended up voting in the negative.

2 Now I haven't been a Commissioner for very
3 long and so my grasp of these things is limited.
4 Could you comment on that, either now or in the
5 posthearing? Do you know of some precedents with this
6 type of fact pattern where the Commission has found in
7 the negative -- found in the affirmative rather?

8 MR. LEBOW: I think there have been many
9 cases over the years where the Commission has found in
10 the affirmative where the profitability has been
11 destroyed by underpricing by imports.

12 There's some argument here about whether we
13 look at 2001. Certainly, if we include 2001 in the
14 database, then we have a very, very clear -- there
15 will be very many cases precedentially that we can
16 cite to you. And although I cannot cite sitting here,
17 I'm not worried that we'll be able to find others that
18 have a fact pattern that's similar to this one, and
19 we'll be happy to cite it for you in our posthearing
20 submission.

21 COMMISSIONER PEARSON: Okay. There's been a
22 fair amount of discussion about the significance of
23 underselling in this case. How should I interpret
24 Tables V-15 and V-16 of the staff report? They're in
25 the public version. To me, they show a rather mixed

1 pattern of underselling and overselling with roughly
2 half each way, so why should I look at that and see
3 them making a strong case that underselling is a big
4 issue?

5 MR. KLETT: Commissioner Pearson, this is
6 Dan Klett. We looked at the same tables, and I think
7 one of the things that these tables -- these tables
8 report margins of underselling on a instance-by-
9 instance basis.

10 So, for example, if you've got an instance
11 of overselling and that instance of overselling is
12 associated with a thousand pounds of imports and
13 you've got an instance of underselling, that instance
14 of underselling is associated with 10,000 pounds of
15 imports, the overselling and the underselling get the
16 same weight.

17 But from a commercial perspective, an
18 instance of underselling of 10,000 pounds I think has
19 a greater commercial effect than an instance of
20 overselling of 1,000 pounds. So we took this table
21 and we replicated the analysis but did it on a volume
22 of import basis rather than an instance of import
23 basis, and you get quite different results.

24 And the, if you want to call it, a
25 distortion, the distortion can go either way. I mean,

1 you could result in more underselling or less
2 underselling. So it's not that this methodology is
3 biased one way or the other.

4 It's just I think that you need to -- when
5 you have instances of underselling, especially when
6 you do it country by country and one country has
7 underselling or overselling but it's a very small
8 volume, that should be given less weight than a
9 country with underselling when that country is a much
10 larger supplier to the U.S. market.

11 So I don't disagree with kind of the way the
12 tables are set up, but I think you need to look at the
13 volume associated with the underselling to get a
14 meaningful interpretation of what's going on
15 commercially.

16 COMMISSIONER PEARSON: Okay. And will you
17 be planning to provide such a meaningful
18 interpretation in your posthearing submission?

19 MR. KLETT: We will be happy to do so.

20 COMMISSIONER PEARSON: Okay. Because, you
21 know, just looking at it, in the markets that I'm more
22 familiar with where there's open competition, one kind
23 of expects to be undersold half the time and oversold
24 half the time. And, you know, there's a lot of price
25 fluctuation in the markets for many commodities and

1 many products, and so to see some underselling doesn't
2 particularly scare me. If there's a good explanation
3 of why it's causing a particular problem here, please
4 let's get that on the record.

5 MR. KLETT: We will. Thank you.

6 COMMISSIONER PEARSON: Mr. Herak, I think I
7 had understood correctly that you were suggesting at
8 one point that customers have quite a bit of market
9 power in this business. Is that a correct
10 interpretation?

11 MR. HERAK: There are certain customers who
12 do have a lot of market power, that's correct.

13 COMMISSIONER PEARSON: Okay. How many CMC
14 customers does Aqualon have overall?

15 MR. HERAK: Hundreds. I'm not sure of the
16 exact number, but some of them are buying a thousand
17 pounds a year and some are buying a million pounds.
18 But several hundreds at least in the U.S.

19 COMMISSIONER PEARSON: Okay. To put it in
20 perspective, can you give me some idea how many
21 customers would account for perhaps 50 percent of your
22 sales? Or whatever you could give that would give me
23 some sense of the concentration of
24 customers, the market power of certain
25 large customers.

1 MR. HERAK: Okay. Well, I can certainly
2 provide you more detailed and accurate information in
3 the posthearing brief. But from the top of my head --
4 and I hope I don't get myself in trouble and the data
5 contradicts this -- but I believe just say, for
6 example, if you took the top 10 customers or say the
7 20 customers, I still think they will be far less than
8 50 percent of the volume.

9 COMMISSIONER PEARSON: Okay.

10 MR. HERAK: So there are a lot of -- I mean,
11 there are some big customers, but there's a lot of
12 middle size and smaller customers. So, although the
13 large ones do have some market power, they don't
14 dominate the, you know, the landscape.

15 COMMISSIONER PEARSON: Mm-hmm. And then, on
16 the producers' side, am I correct to get the
17 impression that there really are just a handful of
18 producers worldwide? I mean, you know all these
19 companies pretty much off the top of your head, don't
20 you?

21 MR. HERAK: Well, there are a number of CMC
22 producers including the Respondents and a number of
23 others. Most of the others that are not subject to
24 this investigation are smaller producers or, you know,
25 kind of second-tier producers. But there are a lot of

1 small producers in China, and there are a few other
2 kind of middle size producers in Europe, like there's
3 one in Germany and one in Italy. There are two
4 reasonably good quality suppliers in Japan, but they
5 don't participate that much in the U.S. market.

6 COMMISSIONER PEARSON: Okay. So the firms
7 are small enough that they mostly are serving a local
8 demand in their country and they're not involved much
9 in the export trade, is that right?

10 MR. HERAK: Right. In their region. I
11 mean, there's some imports from those other producers,
12 but they're a very small proportion of the U.S.
13 market.

14 COMMISSIONER PEARSON: All right. Okay. So
15 the number of firms that are actually active in the
16 export trade would not be terribly large. This is a
17 small fraternity.

18 MR. HERAK: Active in terms of import into
19 the U.S. you mean.

20 COMMISSIONER PEARSON: Well, I'm just trying
21 to get a sense for the industry globally. I mean,
22 there's --

23 MR. HERAK: Well, I guess it depends how you
24 define "export." If you're a Japanese producer and
25 you're exporting to Korea or southeast Asia, I mean,

1 certainly some of those producers are active in
2 exports. And if you're producing in Germany and
3 they're exporting to their neighboring countries, I
4 don't know if we're considering that an export if it's
5 within the EU.

6 COMMISSIONER PEARSON: Okay. Well, looking
7 at just the firms that export to the United States
8 then --

9 MR. HERAK: Okay. Right.

10 COMMISSIONER PEARSON: -- the number is
11 relatively modest.

12 MR. HERAK: Yes. In terms of their
13 quantities, certainly.

14 COMMISSIONER PEARSON: All right. Okay.

15 So, if we think about who's got market in
16 this marketplace if we've got a relatively small
17 number of producers of CMC and a relatively large
18 number of customers, one would expect that the
19 producers would have perhaps more market power than
20 the customers. Do you have any thoughts on that?

21 MR. HERAK: I think that your comment is
22 generally correct, that when you have few producers
23 and many customers, that should be a favorable
24 industry structure, but also it depends on the
25 behavior of those producers. So I don't have any

1 further comment. I agree with your general analysis,
2 but you're right. It does not particularly apply well
3 to this situation.

4 COMMISSIONER PEARSON: Okay. Well, fair
5 enough. If anyone would like to say something more on
6 that in the post-hearing, that's fine, just the basic
7 question as to market power. Mr. Televantos?

8 MR. TELEVANTOS: I was going to comment that
9 in today's economy, which is much more transparent,
10 overcapacity has a much bigger impact than the number
11 of suppliers and that, in this case, our concern is
12 this huge overhanging capacity that we believe is more
13 than what you produce in the domestic market that is
14 the threat and not the number of competitors. You can
15 have 10 competitors, there is no excess capacity, and
16 then all of a sudden then -- change, but in this case,
17 the concern is the existing overcapacity, which we
18 believe will continue for a number of years to come.

19 COMMISSIONER PEARSON: Okay. I do have some
20 more questions, but my light is starting to change,
21 so, Mr. Chairman, I think I'll pass now.

22 CHAIRMAN KOPLAN: Thank you, Commissioner
23 Pearson.

24 Just as a housekeeping matter, Mr. Klett,
25 for purposes of the post-hearing, could you identify

1 for us which of your charts are based on actual data?

2 MR. KLETT: Yes, I will.

3 CHAIRMAN KOPLAN: Okay. And just so I
4 understand, the two charts on pages -- the one on page
5 2 and the one on page 3, the first one is
6 "Purification and Drying," and the second one is
7 headed "Grind, Blend, and Package" -- do those charts
8 represent the Hopewell plant? I see the next picture
9 is of the Hopewell plant, but is that the --

10 MR. HERAK: Schematically, they are
11 generally correct. There are more vessels and more
12 pipes and things than are shown here, but,
13 schematically, it's a reasonable representation of our
14 facility and how we produce.

15 CHAIRMAN KOPLAN: Are there more than four
16 dryers?

17 MR. HERAK: There are, in fact, four dryers.

18 CHAIRMAN KOPLAN: Four dryers. So that's as
19 represented here.

20 MR. HERAK: But if you go to the first page,
21 there are more than one reactor, for example.

22 CHAIRMAN KOPLAN: Yes.

23 MR. HERAK: So in all cases, it's not a
24 perfect depiction of the number of pieces of equipment
25 that we have.

1 CHAIRMAN KOPLAN: But it's pretty close in
2 terms of the Hopewell plant.

3 MR. HERAK: In terms of the flow, it's very
4 good. In terms of the numbers, it's not always
5 accurate.

6 CHAIRMAN KOPLAN: Thank you.

7 Mr. Televantos and Mr. Lebow, the
8 confidential staff report, at page 2-1, indicates
9 that, and I quote, "based on the quantity of total
10 U.S. shipments of the subject imported, purified CMC
11 during January 2002 to '04, 99.2 percent of imported
12 Finnish product is sold directly to end users while
13 89.3 percent of the imported Mexican product and 91.4
14 percent of the imported Dutch product and 99 percent
15 of the imported Swedish product were shipped to end
16 users." That's a quote, and that's all public.

17 At page 9 of Noviant's prehearing brief,
18 they argue that, in evaluating the interchangeability
19 of Finnish subject imports with subject imports from
20 other subject countries, it is critical that the
21 Commission closely examine the statements made by end
22 users in that regard rather than mechanically
23 aggregating end-user/purchaser responses with those of
24 other purchasers who account for 0.8 percent of the
25 imported, Finnish, subject merchandise. Now, they

1 bracketed the 0.8 percent, but that's actually public,
2 and that number actually appears on 2-1 of the
3 confidential staff report as a public number, so I
4 assume that's just a mistake on their part in
5 bracketing it.

6 Do you agree that statements made, such end
7 users as described by Noviant, are probative of the
8 interchangeability of subject imports from Finland
9 with subject imports from Mexico, the Netherlands, and
10 Sweden? If not, why not?

11 MR. KLETT: Mr. Chairman, I'm familiar with
12 the analysis they did on interchangeability with
13 respect to Finland and other subject countries. I
14 cannot replicate their numbers. I looked at that same
15 question with respect to all purchasers, and I found a
16 much larger percentage of purchasers saying that
17 Finland was usually always interchangeable with the
18 other subject countries than reflected in Noviant's
19 brief, and I would be happy to provide our analysis of
20 that same question in our brief. But it did not look
21 like, to me, that Noviant included all purchasers in
22 their tabulation.

23 CHAIRMAN KOPLAN: I appreciate that, Mr.
24 Klett, and I would appreciate it if you would do that
25 for purposes of the post-hearing.

1 MR. KLETT: Thank you.

2 CHAIRMAN KOPLAN: Thank you.

3 I'll try Mr. Televantos and Mr. Lebow on my
4 next question. Beginning on page 12 of your
5 prehearing brief, you have cites to four factors:
6 fungibility, presence of sales or offers to sell in
7 the same geographic market, common or similar channels
8 of distribution, and simultaneous presence of the
9 subject imports used to determine whether subject
10 imports compete with each other and with the domestic
11 like product in the U.S. market.

12 "Those factors are indicative, and I'm
13 quoting, "of the degree of overlap and competition for
14 purposes of our deciding whether to cumulate subject
15 imports from Finland, Mexico, the Netherlands, and
16 Sweden."

17 The prehearing brief concludes that, based
18 on the evidence, cumulation, for purposes of the
19 Commission's analysis, is mandatory in this
20 investigation. However, the prehearing brief filed by
21 Amtex reaches a different result and argues, beginning
22 on page 5, that "here, the above factors shed very
23 little on the dynamics of the industry."

24 The brief then goes on to present an
25 argument that subject imports from Mexico are not

1 fungible with the domestic product by analyzing all of
2 QAM's sales to its U.S. customers for the period, 2002
3 through 2004. Those eight customers listed are
4 Azteca, S&G Resources, Halliburton, P.L. Thomas,
5 Scientific Polymers, and three other additional
6 customers characterized as small but whose identity is
7 bracketed.

8 I do not expect you to agree with the
9 conclusion presented in the Amtex brief, but given the
10 relatively small number of customers, what fault do
11 you find with QAM's methodology?

12 MR. LEBOW: One point I could respond to,
13 sitting here, Commissioner, is that competitive impact
14 in the market is not just measured by the customers a
15 company had already garnered, but it's where it's
16 competing. Quimica Amtex appears in the market much
17 more broadly, is offering to a wider range of
18 customers than those it has so far succeeded in
19 getting, and it has shown an intention, both directly
20 and through its distributor, to try to sell to a wider
21 range of customers. And I think the Commission staff
22 report and answers to questionnaires will support that
23 statement.

24 CHAIRMAN KOPLAN: Okay. And if you can add
25 any additional anecdotal material on that for purposes

1 of the post-hearing, I would certainly appreciate
2 that. Do you think you will be able to do that?

3 MR. LEBOW: Yes, sir. I'm just being very
4 careful here not to use customer names in public.

5 CHAIRMAN KOPLAN: I appreciate that. That's
6 why I'm referencing the post-hearing.

7 MR. LEBOW: Yes, sir.

8 CHAIRMAN KOPLAN: Let me stay with the two
9 of you. By letter, mistakenly dated May 5, 2004,
10 instead of 2005, Akzo Nobel Cellulosics Specialties, a
11 division of Akzo Nobel, B.V., filed self-styled
12 comments for consideration by the Commission. I note
13 that at pages 5, 9, and 10 of the confident staff
14 report, they are identified as subject to suppliers of
15 end users of Products 1, 2, 3, and 6; Akzo Akucel for
16 Products 1, 2, and 3; and Akzo Staflo for Product 6.
17 Their trade names appear with regard to four of our
18 six products.

19 In their letter, they admit to making sales
20 of certain subject products, but they mention other of
21 their products that they claim to be niche products.
22 Those products are identified as cross-carmellose CMC
23 sold to the farm industry that they claim Aqualon
24 omitted from the petition; thixatropic CMC sold to the
25 food, health care, and personal care markets that they

1 claim Aqualon does not have the technology to produce,
2 but I noted this morning that in Ms. Cash's testimony,
3 in Chart 11, I believe that you list that as something
4 you are doing on that particular product.

5 thixatropic, I think you mention in your chart.

6 MS. CASH: Yes.

7 CHAIRMAN KOPLAN: Right. And then they also
8 list an entitled "environmentally," and I'm quoting,
9 "replacement for polyacrylamides which are used in
10 offshore applications." Apparently, that's sold to
11 the oil-drilling industry.

12 Do you agree that those three products are
13 niche products. Probably with regard to the first two
14 because they relate to food, I should hear from you on
15 that, Ms. Cash. That's the cross-carmellose and
16 thixatropic.

17 MS. CASH: Well, the cross-carmellose is
18 actually for pharmaceutical applications. It would
19 not be for food.

20 CHAIRMAN KOPLAN: Okay.

21 MS. CASH: And the thixatropic CMC; we also
22 have specialty thixatropic types --

23 CHAIRMAN KOPLAN: You do.

24 MS. CASH: -- that are sold into food, yes.

25 CHAIRMAN KOPLAN: And do you also have

1 cross-carmellose CMC?

2 MR. HERAK: No. We do not produce the
3 cross-carmellose CMC, which is a CMC that undergoes
4 some further reaction steps after the ones that I
5 explained earlier today.

6 CHAIRMAN KOPLAN: Okay.

7 MR. HERAK: We intentionally excluded that
8 as subject material when we filed the petition since
9 we are not a producer of that product.

10 CHAIRMAN KOPLAN: I'm trying to understand.
11 Maybe I misunderstood. Do you produce similar or
12 competing products for these three?

13 MR. HERAK: For the cross-carmellose, no.
14 For the thixatropic CMC, I'm not exactly certain what
15 the product is that Akzo is referencing, but we do
16 have a number of thixatropic CMC grades, and also for
17 this one they reference that's replacing the
18 polyacrylamide; without knowing a little bit more
19 about what their product is, it's difficult to say
20 whether we have something that is comparable.

21 CHAIRMAN KOPLAN: Okay. So you're not sure
22 with respect to that one because you don't have enough
23 detail on it.

24 MR. HERAK: Correct.

25 CHAIRMAN KOPLAN: Thank you. I see my red

1 light is on, so I will turn to Commissioner Miller.

2 COMMISSIONER MILLER: Thank you, Mr.
3 Chairman. I just have a couple of, hopefully, kind of
4 quick things, one for the post-hearing submission.

5 But before, at one point earlier, I had
6 started to ask questions about global demand. Mr.
7 Herak, I think you responded to a question I had posed
8 at that point, but I just want to clarify one issue
9 about global demand and demand as you see it in the
10 future generally.

11 Clearly, in the period we've looked at,
12 demand, we've talked about, has gone up, and we've
13 basically mostly, it sounds like, attributed that to
14 increased demand in the oil field for your product.
15 So just so we don't get sort of a misimpression, we
16 talked about how much that -- and we all know that
17 swings up and down, depending on activities and oil
18 prices and natural gas prices and such.

19 When it comes to demand for CMC in the other
20 areas, the food and personal products and such, is
21 that a mature industry, a growth industry? How would
22 you characterize -- I think we probably have it in our
23 numbers, although I'm not sure it's dissected exactly
24 that way in the staff report at this point, what we
25 would see. Are those growth industries for the

1 product as well, or are those pretty mature?

2 MR. HERAK: For the other areas, the food
3 and the personal care and the paper, they are
4 generally mature areas, but there may still be some
5 opportunities for growth, depending on reformulation,
6 as Ms. Cash had testified to. There sometimes are
7 reformulations, but those things are generally over a
8 period of a year or more that could impact the demand.

9 I believe that the use of CMC in food should
10 be growing a little bit more than population because
11 there do tend to be more prepared foods that may
12 require some of the CMC and other hydrocolloids, but
13 with the exception of the oil field, I would
14 characterize the opportunities for growth in the other
15 areas as fairly modest. The CMC has been around for
16 almost 60 years, so it's not a new product in that
17 sense, even though there are a few maybe slight niche
18 grades that have some new or unique --

19 MR. TELEVANTOS: I could add, from a
20 strategic-planning perspective, Commissioner Miller,
21 that we're planning for CMC to be growing at about 3
22 percent a year, and if you go back to the seventies,
23 the consumption of CMC in oil drilling was even more
24 than it is today. So that business is clearly
25 cyclical, and the rest of the market, we believe, is

1 growing at about 3 percent per year. That's our
2 planning basis, at least.

3 COMMISSIONER MILLER: Okay. Good. That's
4 exactly what I wanted to be clear on the record
5 because one might get a different impression just from
6 the data we have over this period if you look at the
7 whole thing.

8 Then the only other thing I would like to
9 ask and invite you to do, given our earlier exchanges
10 about the Procter & Gamble account, I think it would
11 be useful, for the post-hearing submission, if you
12 were to provide more of a history of that account in
13 the time frame that we've talked about today and to
14 detail it in more specifics. I would invite you to
15 provide specific company documentation or information
16 about the Internet auction that you referred to
17 earlier, and because we have talked about it today, I
18 think it needs to be more clear on our record that we
19 have that information.

20 MR. HERAK: Certainly. I would be glad to
21 do that.

22 COMMISSIONER MILLER: With that, I believe I
23 have no further questions. I appreciate all of your
24 answers today.

25 CHAIRMAN KOPLAN: Thank you, Commissioner.

1 Commissioner Hillman?

2 COMMISSIONER HILLMAN: Just, I hope, a quick
3 follow-up a little bit on the questions that the
4 chairman was asking because he was specifically asking
5 you, to some degree, to respond to the arguments made
6 in Quimica Amtex's brief in terms of the specific
7 customers and why it is that you do or do not compete
8 with those specific customer, and I guess I would ask
9 you to make sure that you do respond to the specific
10 allegations in their brief.

11 But then, more generally, there are other
12 Respondents that have also made the argument that
13 Aqualon's customers have either had difficulties
14 obtaining product or have had problems with Aqualon's
15 quality, and I didn't know whether there was anything
16 that you could say, either here or, again, I would
17 ask, in the post-hearing -- I just want to give you
18 the opportunity to respond to the arguments that were
19 made in the Respondents' brief on issues of product
20 availability and product quality.

21 MR. HERAK: I'll make a few brief comments,
22 and then maybe we can add to that in the post-hearing
23 brief.

24 As we've explained, we do have hundreds of
25 customers, and we have a very broad product line, and

1 we do the best job we can in terms of planning our
2 production and having adequate inventory for each of
3 the different CMC grades. But from time to time, the
4 demand in a certain period in a certain month may
5 spike a little bit more than what our expectation was
6 or what the customers had forecast, so it does occur,
7 from time to time, that we have stock-outs; and,
8 therefore, there may be delayed shipments, and that
9 could be certainly characterized as an availability
10 problem.

11 COMMISSIONER HILLMAN: Typically, if that
12 happens, how long is the delay?

13 MR. HERAK: It depends. In many instances,
14 it can be a week or two. I would say sometimes it's a
15 day that we ship late. In very rare instances, it may
16 be more than two weeks if it's a very unique product
17 that we don't make that often. Most of the products
18 we make are roughly on a 30-day cycle, but there are
19 some specialty ones that because they are small
20 volume, we may choose to make them only, you know,
21 twice a year, for example, and we wouldn't make a new
22 run just maybe for a small order.

23 COMMISSIONER HILLMAN: Okay. If you can
24 help put some of this in context in terms of, again,
25 the total volume or percentage of sales that were ever

1 subject to any of these delays, just so we can put it
2 in its fair context, from your perspective of what
3 portion of your sales or what volume in pounds, or
4 however else is easy to give us, just to make sure
5 that we understand the perspective that you're
6 bringing to it.

7 MR. HERAK: Just one additional comment. I
8 would say that the area of our business that would
9 experience the most frequent problem maybe with delays
10 is the oil field area, and that's because the orders
11 are extremely large, and the demand pattern has a lot
12 of fluctuation.

13 Even when we work closely with our
14 customers, and we ask them, "How much will you buy
15 next month?" they may tell us, "A hundred thousand
16 pounds," and then, five days later, we see an order
17 for 200,000 pounds because their customers are very
18 erratic in their order patterns. So that would be the
19 area where I would say, in general, the service level
20 is a little bit less than the others because of the
21 very large volumes and unpredictable nature sometimes
22 of the demand.

23 COMMISSIONER HILLMAN: Okay. You've
24 addressed the availability issue. How about quality?

25 MR. HERAK: Again, we have hundreds of

1 customers. From time to time, there are quality
2 complaints. We investigate all of those. People like
3 Ms. Cash and others work with customers to resolve
4 anything. But by and large, I think that the quality
5 problems are a very, very small portion of our overall
6 business.

7 COMMISSIONER HILLMAN: Okay. Again, if
8 there are specifics that are raised in the
9 Respondents' briefs that you want to address
10 specifically in your post-hearing brief, I would
11 welcome that as well.

12 MR. HERAK: Just one final comment,
13 Commissioner Hillman. I'm not aware of any business,
14 in the last few years, that we've lost specifically
15 because of a quality problem. I'm not saying that it
16 hasn't happened, but, to my knowledge, there hasn't
17 been any specific business. I don't think it's a
18 common occurrence.

19 COMMISSIONER HILLMAN: Okay. I appreciate
20 those responses, and with that, I have nothing
21 further. I want to thank you all very much for your
22 answers. It has been very helpful.

23 CHAIRMAN KOPLAN: Thank you, Commissioner.

24 Commissioner Lane?

25 Commissioner Pearson?

1 COMMISSIONER PEARSON: On page 2-5 of the
2 public version of the staff report, there is language,
3 just prior to footnote 15 -- there are some redactions
4 there. Let me just read it as it's redacted.

5 "It would cost about dollars (redacted) and
6 take approximately (redacted) to expand its production
7 capacity to (redacted) million pounds." There is
8 another redaction after that.

9 Without going into details, it's fairly
10 clear that there is the possibility of spending some
11 money to do something to expand output. Okay? And
12 the question that I have, and you can address it now
13 if you want but perhaps, more appropriately, in the
14 post-hearing, is, why hasn't this been done?

15 MR. HERAK: Commissioner Pearson, I'll
16 respond to that. All of this redacted information; it
17 essentially relates to what we talked about earlier,
18 where we had downgraded our capacity by about 20
19 percent because of the market situation, and as I
20 mentioned, we are actively looking at contingency
21 plans to reactivate that and certainly will do so if
22 we get an affirmative decision in this proceeding.

23 The reason that we have not done that
24 previously is because there is a certain amount of
25 cost, both in capital and also in labor. We need to

1 hire people, we need to train people, and with an
2 uncertain future with respect to the demand and the
3 pricing, it's difficult for us to have the confidence
4 that those would be good decisions and good
5 investments at the current time.

6 MR. TELEVANTOS: Commissioner Pearson?

7 COMMISSIONER PEARSON: Yes.

8 MR. TELEVANTOS: It's the crux of our case.
9 We're saying that with the loss in profitability, we
10 can no longer justify investment, either in people or
11 capital, to continue to operate our assets in a way
12 that we can satisfy the needs of the market in the
13 long term, and this is a very example of what we have
14 been unable to do and justify financially because of
15 the damage caused from the underselling from the
16 imports.

17 COMMISSIONER PEARSON: Well, I hear that,
18 and yet I have some sense of the relationship between
19 volume and fixed costs and the desirability of
20 spreading fixed costs over more units, and just kind
21 of my back-of-the-envelope calculations in this
22 particular instance, it wasn't obvious to me that if
23 domestic consumption is expanding, that there was a
24 strong case for not making the investment that's
25 suggested here in the redacted material. So that's

1 what I was trying to --

2 MR. TELEVANTOS: Well, the totality of the
3 analysis, though, is expectation of the growth that
4 has happened in oil field is not expected to grow much
5 more, and it is going to be cyclical. So how much
6 more capital do you spend? At what expense to further
7 price erosion would you be seeing if we tried to use
8 excess capacity to gain more position in the market?
9 So that's the analysis we did. We didn't feel that we
10 could justify, given the uncertainty, further domestic
11 import underpricing.

12 MR. HERAK: And one additional comment,
13 Commissioner Pearson, is that a lot of the recent
14 increase in demand, which, if it did continue, we
15 could sell to, is the lowest-profitability part of the
16 business because, as we mentioned earlier, the pricing
17 is lower for those products, and also the cost for
18 production is higher. So the marginal contribution
19 from that area is the lowest of all the industries.

20 COMMISSIONER PEARSON: Okay. Well, thank
21 you for that clarification. If there is anything more
22 you want to say in the post-hearing, feel free;
23 otherwise, I appreciate those explanations.

24 Then if one flips the page over so that we
25 would then be on page 2-6 of the public report, there

1 is a sentence just prior to footnote 17. The
2 nonredacted part reads: "In addition, Aqualon
3 reported that...." So when you have a chance to look
4 at that, and this clearly perhaps would be best
5 addressed in the post-hearing -- I found this
6 statement to be somewhat surprising, the redacted
7 material. I'm married to an accountant, and, over
8 time, I've developed some appreciation for the variety
9 of management information systems that are available,
10 it seems to me, to address issues not entirely unlike
11 the one that's redacted here.

12 So isn't this just a management/information-
13 systems issue that could be addressed in a fairly
14 straightforward way?

15 MR. LEBOW: I fear I'm peering through a
16 glass darkly, Commissioner, because all I have with me
17 is the public redacted version, but we will read the
18 proprietary version. We'll see what's there. We'll
19 read your remarks on the transcript. We'll put them
20 together and respond.

21 COMMISSIONER PEARSON: Okay. Thank you. I
22 don't like to use redacted material, but in this case
23 there was no other way to raise the issue, so I
24 appreciate your indulgence.

25 Ms. Cash, one quick clarification for you.

1 You talked quite a bit about substitution in various
2 ways, and I very much appreciated your comparison of
3 the different products in terms of their functional
4 properties because, obviously, this is a very
5 specialized business in terms of getting something
6 that really meets the customer's requirement. But if
7 suddenly CMC had to be pulled from the market for some
8 regulatory reason, all of these products, within a
9 period of months, would be reformulated and would be
10 back on the shelf, wouldn't they? There is none of
11 those products that could not be produced in the
12 absence of CMC, is there?

13 MS. CASH: It's true that they could be
14 produced. They would be different. There would be
15 some difficulty in offering, say, the full line of the
16 Aunt Jemima pancake syrup, or what you would get, the
17 consumer would notice a difference, and, of course,
18 companies are quite sensitive to that. So does that
19 answer your question sufficiently?

20 COMMISSIONER PEARSON: Yes, it does, and
21 then a follow-up to that: Am I correct to assume
22 that, for the manufacturers of these products, there
23 are at least two issues? One is the up-front cost to
24 reformulate, --

25 MS. CASH: Right.

1 COMMISSIONER PEARSON: -- which you've
2 indicated is considerable, and I can believe that.
3 The second one is, after the reformulation is done,
4 would the manufacturer necessarily have a higher cost
5 of production for the product, or is that just going
6 to depend on other things? Maybe it will cost him
7 more, maybe it will cost him less, but the consumer
8 may notice a difference.

9 MS. CASH: You mean, in your case, if CMC
10 were replaced with something else?

11 COMMISSIONER PEARSON: Yes.

12 MS. CASH: It could go either way. They
13 could attempt to replace CMC with a less-expensive
14 hydrocolloid, or they could choose to replace it with
15 the more expensive, or the processing, of course,
16 could be different, too, if they had to, say, start
17 heating in order to get it to go into solution versus
18 not heating. So it could go either way.

19 COMMISSIONER PEARSON: Okay. So
20 substitution can occur but with some difficulty in
21 most of these --

22 MS. CASH: In most areas, yes.

23 COMMISSIONER PEARSON: Okay. Thank you.

24 My last question, Mr. Televantos. In your
25 capacity as a vice president of Hercules, and it has

1 nothing directly to do with this case, but I'm just
2 curious, does Hercules, in any of its divisions,
3 manufacture autolyzed yeasts? No autolyzed yeast, no
4 hydrolyzed yeast?

5 MR. TELEVANTOS: No, we do not.

6 COMMISSIONER PEARSON: And haven't in the
7 past.

8 MS. CASH: Yes. At one time, we offered
9 some vegetable proteins which were based on some
10 autolyzed yeast, but that's been way before any of our
11 times.

12 MR. TELEVANTOS: That was a business we have
13 divested since then.

14 MS. CASH: Yes. It was a business that we
15 have divested, but it did have the Hercules brand.

16 COMMISSIONER PEARSON: Okay. Thank you.
17 That's just a miscellaneous question that was on my
18 mind, and so I used my last minute.

19 MR. TELEVANTOS: Mr. Pearson, maybe I can
20 add a comment. The food side, at least, of
21 substitution and reformulation -- the food companies,
22 the branded products especially, they value the exact
23 taste and properties of their product a lot more than
24 minor changes in cost, and any reformulation that
25 would require either relabeling, because it would, or

1 change in taste and risk of that is an extremely
2 expensive and risky undertaking, so that's not
3 something they do or are likely to do unless there was
4 a regulatory withdrawal of a given ingredient.

5 COMMISSIONER PEARSON: Sure. And in
6 addition to taste, I'm sure, with some of these
7 products, there are issues regarding mouth feel.

8 MR. TELEVANTOS: Absolutely. Thank you.

9 COMMISSIONER PEARSON: Well, thank you very
10 much. I've enjoyed this discussion.

11 Mr. Chairman, I have no further questions.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.

13 I have a few left. My first is a follow-up
14 to an inquiry that Commissioner Hillman made on an
15 earlier round. It's to Mr. Televantos and Mr. Lebow.
16 Beginning on page 8, the Amtex prehearing brief states
17 that S&G was the second-largest customer of QAM during
18 the period of investigation and has been its customer
19 for the past 10 years. They argue that S&G is purely
20 an importer and that there is no chance that this
21 distribution channel ever will be available to Aqualon
22 or to Noviant.

23 If QAM were absent from the U.S. market, S&G
24 would be forced to turn to Asia or some other foreign
25 source for its product. It is their position, and I

1 quote, "since S&G is not available as a customer for
2 Aqualon, and there are other nonsubject products
3 available if QAM supplies are not available, QAM sales
4 to S&G are having no competitive effect on Aqualon."

5 I know your brief, at page 20, describes S&G
6 as a major distributor which competes with Aqualon.
7 However, do you agree that S&G is not a potential
8 customer for Aqualon, and if not, why not?

9 MR. HERAK: This is Mr. Herak. I'll answer
10 that. We would, in fact, not sell to S&G because, by
11 doing so, we would be competing against ourselves. We
12 have our direct sales people calling on the accounts.
13 We have no incentive or motivation to sell to S&G,
14 which would then be competing against us. So we've
15 chosen to have the distribution channel primarily for
16 our own people, with a few small exceptions. But we
17 do see S&G and the materials that they are selling as
18 a direct competitor to us at the end customer.

19 CHAIRMAN KOPLAN: Okay. Thank you. I
20 appreciate that.

21 Did I hear somebody else?

22 Mr. Lebow, Noviant asserts in its prehearing
23 brief, at page 2, and Mr. Clark argued this morning,
24 that, and I quote, "demand for purified CMC has
25 increased in every major end use, and with respect to

1 oil field applications, has trended strongly upward
2 with no sign of retreating. As this demand has
3 increased, the domestic industry's market share and
4 that of nonsubject imports have increased while the
5 subject imports' market share has steadily decreased."

6 I note that at pages 28 through 31 of your
7 prehearing brief, you indicate that Aqualon had
8 adverse volume and market share impact due to subject
9 imports from 2001 to 2002 and then cut its prices in
10 2003 and 2004 in an effort to stem volume losses. I
11 understand that this is your explanation for your
12 increased market share in 2003 and 2004. However, to
13 what do you attribute the corresponding increase in
14 market share by nonsubject imports? I can't discuss
15 the specifics of our data because it's BPI, but I'm
16 referring to Table C-1 in our confidential staff
17 report. Do you want to deal with that in the post-
18 hearing, or do you want to deal with it now?

19 MR. LEBOW: I think we'll deal with it in
20 the post-hearing, unless one of the company people has
21 anything they can say specifically about it.

22 MR. HERAK: The only comment that I would
23 make, Chairman Koplan, is that still the nonsubject
24 imports are a very small share of the U.S. market, but
25 we can deal with it more specifically in the post-

1 hearing brief.

2 CHAIRMAN KOPLAN: Thank you. I appreciate
3 that, and I'll look forward to that.

4 Mr. Klett, at pages 36 and 37 of the
5 prehearing brief, you urge the Commission to combine
6 price data reported by firms that purchase subject
7 imports from an importer-distributor -- that's CSR
8 Tables 5-8 to 5-13 -- with import prices reported by
9 end-use purchasers that are themselves importers from
10 subject countries, Tables F-1 to F-5. The combined
11 data are then compared to net delivered purchase
12 prices for the domestic product in order to compute
13 the margins of underselling and overselling contained
14 in Exhibit 3-B of your brief and summarized in the
15 first tabulation on page 37.

16 Generally, the Commission does not combine
17 prices at different levels of trade when calculating
18 margins of underselling and overselling. However, a
19 comparison of price trends in Appendix F reflects
20 declining prices for domestic products but increasing
21 prices for subject imports of Product 1, flat prices
22 for subject imports of Product 2, and mixed trends for
23 subject imports of Product 5. Can you explain for me
24 what is responsible for these differences in price
25 trends between Products 1, 2, and 5 for the subject

1 imports as compared to domestic price trends?

2 MR. KLETT: Well, as a first matter, I would
3 like to say that although the Commission does not
4 generally compare prices at different levels of
5 distribution, I think the methodology I suggested does
6 compare prices at the same level of distribution, and
7 that is that an importer that is an end user and
8 imports directly, which is, I think, the data
9 reflected in Appendix F, and an end user that buys
10 from a distributor, which is the price data for
11 imports reflected in the body of the staff report, are
12 both sales to end users. It just happens that one end
13 user imports directly; the other end user buys from a
14 distributor.

15 So I don't think my methodology goes against
16 that principle of comparing prices at the same level
17 of distribution.

18 With respect to differences in trends, I
19 would have to look at the specific products that you
20 enumerated, but it doesn't surprise me that the trends
21 for subject import pricing versus the trends for
22 Aqualon pricing did differ in the sense that by virtue
23 of Aqualon's strategy, I would expect its prices to
24 fall at a faster rate than subject import prices. But
25 with regard to the specifics of your question, for

1 those particular products, if you don't mind, I would
2 like to deal with that in the post-hearing.

3 CHAIRMAN KOPLAN: I would appreciate that,
4 and I thought you probably would have to do that.
5 Thank you, and I look forward to getting that from
6 you.

7 MR. KLETT: Thank you.

8 CHAIRMAN KOPLAN: And to your response now,
9 obviously, as well. Let me just ask my last one of
10 you while I've got you there.

11 I'm wondering whether it's possible, and
12 this is a follow-up to Commissioner Miller talking to
13 you about these reverse Internet auctions, I'm
14 wondering whether it's possible that the innovation of
15 reverse Internet auctions has contributed to lower
16 prices for purified CMC, and, if so, could you
17 quantify the contribution of the auction form itself
18 to lower prices? Do you want to think about that?
19 Mr. Herak?

20 MR. HERAK: Well, we can think about it and
21 maybe give a more complete answer in the post-hearing
22 brief. But as I testified earlier, the reverse
23 Internet auction is not a commonly used technique by
24 the vast majority of the market, so at first pass, --

25 CHAIRMAN KOPLAN: That's why I'm asking.

1 MR. HERAK: -- I would say that it hasn't
2 had a big contribution to the overall trend. It may
3 facilitate achieving better prices at some customers,
4 but, by and large, I think other methodologies that
5 purchasing people can use can also be equally as
6 effective.

7 MR. TELEVANTOS: But we should be able to
8 give you a more comprehensive answer.

9 CHAIRMAN KOPLAN: Yes. Thank you. That was
10 going to be my follow-up, but you've covered that.

11 Go ahead, Mr. Lebow. You were reaching for
12 the microphone.

13 MR. LEBOW: I was reaching to turn it off.
14 I have nothing further to say.

15 (Laughter.)

16 CHAIRMAN KOPLAN: Okay. Well, neither do I.
17 I have no further questions. I want to thank you for
18 your responses to all of our questions, and let me see
19 if there are any other questions from the dias.
20 Seeing that there are none, Ms. Mazur, does staff have
21 questions of this panel before I release them?

22 Mr. Reynolds?

23 MR. REYNOLDS: I have one question for you.

24 CHAIRMAN KOPLAN: Are you on microphone?

25 MR. REYNOLDS: I think I turned it on.

1 Neal Reynolds with the Office of the General
2 Counsel. Thanks for being here.

3 My question is with respect to the grades
4 that are sold in each of the end-use markets we've
5 been talking about this morning -- we've been talking
6 about paper, pharmaceuticals, food, oil field, and
7 other uses --

8 CHAIRMAN KOPLAN: I know it's on. I don't
9 think it's working. Is there another mike there?

10 MR. REYNOLDS: Is this better?

11 CHAIRMAN KOPLAN: Yes.

12 MR. REYNOLDS: We've been talking about
13 essentially several different end uses, segments of
14 the market: food, pharmaceuticals, paper, oil field,
15 and other uses, as we set forth in our staff report.
16 Do you sell different grades and types of products
17 into each of those markets for each of the purchasers,
18 or is there some overlap between end uses in terms of
19 types and grades sold? In particular, I would like to
20 know whether you sell the same grades of products into
21 the oil field, paper, and other uses segments of the
22 markets.

23 MR. HERAK: Let me try to address that.

24 Chuck Herak speaking.

25 There is some overlap, but in some areas

1 there is little overlap. For example, the products
2 for the oil-drilling area are specially made to have
3 the best functionality in that application, and they
4 are not generally used in other areas.

5 For some of the other applications, for
6 example, the same type of product that could be used
7 in a food may also be used in a toothpaste or
8 potentially in a pharmaceutical. In addition, some
9 things that can be used in paper or paper towels may
10 find utility in some other appears like ceramics, and,
11 in fact, some of the food grades and the paper grades
12 are quite similar. The only difference is that the
13 food grade has this requirement for a slightly higher
14 purity. But other than that, in every other way, it
15 would be virtually the same. Does that answer your
16 question?

17 MR. REYNOLDS: It does, actually, and I
18 guess my question is, do you have a sense of how much,
19 in terms of general percentages or numbers of grades,
20 would be sold commonly between those end-use markets,
21 if that is clear what I'm asking?

22 MR. HERAK: It's difficult for me to try to
23 quantify it off the top of my head. Maybe in the
24 post-hearing brief, we can look at the figures and try
25 to give some type of quantitative response.

1 MR. REYNOLDS: That would be great. Thanks.

2 MR. HERAK: Excuse me. Would you prefer a
3 response in terms of the volume or the number of
4 products where there is common overlap?

5 MR. REYNOLDS: I think, both.

6 (Laughter.)

7 MR. HERAK: Okay.

8 MR. REYNOLDS: Sorry.

9 MR. HERAK: I'm making more work for
10 ourselves.

11 MR. REYNOLDS: Thanks.

12 MR. TELEVANTOS: Mr. Reynolds, an additional
13 comment is that, as we mentioned earlier, the facility
14 can be tuned to make successive batches to be exactly
15 the next grade that you want to make, so we don't
16 distinguish in terms of cost of manufacture or
17 complexity of manufacturing amongst those grades, and
18 neither do our competitors.

19 MS. MAZUR: Mr. Chairman, staff has no
20 further questions.

21 CHAIRMAN KOPLAN: Thank you. I do
22 appreciate the questions that were asked.

23 Before I release this panel, Mr. Clark, Mr.
24 Neeley, do you have any questions of this panel before
25 they are released?

1 MR. CLARK: Mr. Chairman, we have no
2 questions.

3 CHAIRMAN KOPLAN: Thank you. We will now
4 break for lunch, come back, and resume at 2 o'clock.
5 I would mention to you that the room is not secure, so
6 any confidential information that you have with you,
7 you need to take with you and come back with it this
8 afternoon, and with that, I'll see you all at 2
9 o'clock.

10 (Whereupon, at 12:55 p.m., a luncheon recess
11 was taken.)

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1 period of investigation.

2 Not speaking directly but available to
3 answer questions, sitting behind me to my left is Mr.
4 Illka Taminen. He is a technical sales manager for
5 Noviant, specializing in the paper industry.

6 Then speaking as a witness, sitting to the
7 right of Mr. Taminen, is David Goss. He is the
8 research and development manager for West Linn Paper
9 Company in Portland, Oregon.

10 The next witness, sitting to my extreme
11 right, is Mr. Ray Somers. He is retired but
12 previously was the global sourcing manager for
13 Halliburton Energy Services.

14 And then, finally, sitting at the table
15 behind me, to my right, is Mr. Bruce Malashevich from
16 Economic Consulting Services.

17 Also, sitting to the left of Bruce is my
18 colleague, Keith Marino.

19 With that, Mr. Chairman, by way of
20 introduction, I'm going to ask Mr. Huizinga, vice
21 president of sales, to kick off our testimony.

22 CHAIRMAN KOPLAN: Thank you. Good
23 afternoon.

24 MR. HUIZINGA: Good afternoon. My name is
25 Dick Huizinga, presently, since January 2005, global

1 sales director for paper and boat industry for the
2 company, CP Kelco.

3 CHAIRMAN KOPLAN: Could you move that
4 microphone directly in front of you? It would be
5 helpful.

6 MR. HUIZINGA: As Matthew stated, during
7 most of the period of investigation, as of June 2003
8 up to December 2004, I was vice president of sales
9 globally for Noviant Companies and, therefore,
10 responsible for all of the sales which Noviant
11 committed in purified CMC, crude CMC, and cross-
12 carmellose or cross-link CMC.

13 Before holding that position, I was
14 responsible for the sales areas of Europe, Middle
15 East, and Africa. All in all, I've been involved in
16 the sales of CMC over the last 13 to 14 years within
17 the company of Noviant.

18 I have mentioned already the name of CP
19 Kelco. Let me just quickly clarify that a little bit.
20 Our mother company, J.M. Huber Corporation, from New
21 Jersey here in the USA, purchased CP Kelco in October
22 2004. At this moment, or since then, actually, we
23 have been merging the two companies, the former CMC
24 business of Noviant and the other hydrocolloids
25 business of CP Kelco, into the newly adopted name of

1 CP Kelco, as such. So, therefore, I'm now working for
2 CP Kelco and not Noviant, to clarify that a little
3 bit.

4 CP Kelco was not a CMC producer. The merger
5 involved, in that sense, a combination of the focus of
6 CMC from the Noviant organization with the strains of
7 CP Kelco into other hydrocolloids business, as such.

8 My testimony today will address several of
9 the key issues in this proceeding and will review
10 Noviant's, now-CP Kelco's, sales philosophy. In my
11 presentation today, I will be as concise and direct as
12 I can be within the bounds of confidentiality. But
13 since English, and probably you have heard it already,
14 is not my native tongue, I apologize for any language
15 mistakes or, I hope not, also some confusion later on
16 with the questioning.

17 Noviant, now CP Kelco, is a global producer
18 of CMC. Without doubt, the U.S. is important as a
19 large market for our company, but it's not the most
20 important market. For all of our three mills, we
21 export more purified CMC to other export markets than
22 to the U.S. Indeed, many of our largest U.S.
23 customers are global customers who, therefore, also
24 make global, strategic sourcing decisions, a portion
25 of which results in also sourcing into the USA.

1 Our marketing philosophy is one of value
2 added. We succeed, if at all, by bringing solutions
3 to customers' problems. We focus our activities on
4 functional growth in applications like paper, in
5 drilling, and regulated applications like food,
6 pharma, and personal care and also the construction
7 industry. Our approach actually is to provide to our
8 customer tailor-made products, tailor-made services
9 also to the customers, as well as a lot of application
10 know-how, how to apply our products in their
11 application.

12 Our plants in Sweden and Holland are well
13 suited to the production of small, custom batches and
14 off-standard products, and that was already discussed
15 also this morning, and we use that flexibility to
16 accommodate customers' needs for unique formulations
17 and customized products.

18 Our service commitment comes in various
19 forms, from maintaining local and also consignment
20 stocks to in-plant process and application
21 improvements. To enable these support functions, we
22 have invested, over the past few years, heavily in
23 research and development activities. Mr. McKenzie, as
24 was introduced by Matthew, will address the issue in
25 more detail in his testimony, but let me just note

1 that we maintain application-specific labs and testing
2 facilities in Finland, for example, for paper and oil-
3 drilling applications, and in Holland for main,
4 regular applications, and we employ many technical
5 sales manager with experience in key industries.

6 Several of my colleagues on the present
7 team, on the paper team, we've been working with. For
8 example, Mr. Illka Taminen, who we brought with us
9 here, has worked in his previous life in a paper mill
10 and, therefore, can bring an insider's knowledge to
11 our customers, and that is also, for example, valid
12 for colleagues who are active for us in the oil-
13 drilling industry.

14 Therefore, it really gives an added value
15 with inside knowledge to the customers, not just, as I
16 would say, a hydrocolloids sales pitch which we see
17 coming from Aqualon to the customers. This approach
18 which we have has brought us important success. For
19 example, we have developed a unique, technical grade
20 of crude CMC products that is sold specifically for
21 oil-drilling applications. Besides that, also, for
22 example, we have developed specific crude CMC products
23 also, for example, for the detergent industry,
24 specialized in that.

25 Products of the oil-drilling industry, which

1 I referred to, have expanded specifically the markets
2 for CMC and has also captured partly purified sales in
3 the market.

4 Another example is the paper application,
5 where we have succeeded in growing the business for
6 purified CMC by learning and showing the customers how
7 to apply our products to improve their process, to
8 improve the reliability of their paper machines, by
9 switching, for example, from starch, or PVOH, to CMC.
10 This has been a very successful focus for us and has
11 allowed us to grow the markets for CMC by displacing
12 specifically other materials.

13 The relationship of other materials to CMC
14 is not a one-way street. Just as CMC can replace
15 other hydrocolloids and water-soluble polymers, of
16 course, it's also the reverse way, which I've
17 discussed this morning in part. As a result, we
18 carefully monitor prices for a large range of products
19 like, for example, guar for foods, polyvinyl alcohol
20 or starch for paper, carrageenan for toothpaste.
21 There are also many other water-soluble polymers or
22 hydrocolloids. As we know, today, a movement in
23 relative price settings for these products can trigger
24 a reaction in the market for us.

25 I read with interest and surprise and also

1 have been following the discussion this morning with
2 interest regarding the statements of Aqualon,
3 Aqualon's brief, and the discussion this morning, that
4 our finish plant can easily produce regulated
5 products, such as food-grade CMC. This was news to
6 me, as such. Our finish plants -- let me clarify that
7 -- are dedicated to industrial applications,
8 specifically for paper, as mentioned, for the oil-
9 drilling industry, but also for other construction or
10 other industrial applications, as well as, for
11 example, for the technical, the crude CMC which we
12 produce for the detergents industry, and also for
13 construction and industrial applications.

14 Foods, pharma, and other regulated
15 applications have, for us, a much more fragmented
16 demand, featuring small batches, shorter production
17 runs, and leaving aside the fact that, for example,
18 Finland is not food or pharma qualified, it would be,
19 for us, highly uneconomic to produce small runs in a
20 mill specifically designed to handle long production
21 runs, especially when our two other mills are
22 qualified and specifically engineered for the
23 customized production runs needed for regulated
24 applications.

25 Let me assure you that if anyone has told

1 you that they put out finished material in food or
2 other regulated application, that they either do not
3 really know well where the material is coming from,
4 or, two, that they are in violation of regulations and
5 standards. I respectfully, therefore, also suggest
6 that you do not consume those products in which these
7 products are actually used in.

8 One final point. As you know, in early
9 2003, Noviant announced a price increase for the U.S.
10 and in certain other markets. We were undercut by
11 Aqualon, specifically in the U.S., and we have lost
12 significant business at important accounts.

13 When I became vice president, shortly after,
14 -- with them to raise the prices, my first job
15 actually was to hold the line on prices and even
16 actually also prevent further business losses in the
17 market for us. We had a recent price increase in
18 2003, in contradiction to what was said this morning.

19 At the beginning of 2004, long before this
20 case materialized, I set establishing a price increase
21 as one of my personal critical success factors for
22 myself in the business over the period of 2000 and
23 2004. In September, therefore, also we announced a
24 price increase in the markets on a global basis, not
25 only in the U.S. but on a global basis in an effort to

1 adjust the prices to account for accumulated costs and
2 currency movements which we have seen in the market.

3 This last increase was successful, and I
4 assume that Aqualon will attribute this price increase
5 to their filing of this case, as I think we have seen
6 this morning. That assertion, however, is false. I'm
7 here to tell you that our announced price increase
8 over 2004, and, specifically, the one in September
9 2004, was not antidumping related.

10 As I understand the antidumping analysis,
11 raising prices, for example, in the home markets is
12 not safe really. It's actually the opposite of what
13 one would do in order to avoid the antidumping
14 calculations. So, therefore, it was not related to
15 the antidumping. The price in the U.S. and the global
16 markets needed to rise in 2003 and, specifically, of
17 course, also in 2004.

18 We tried to make that happen in -- Aqualon
19 occurs in 2003. In 2004 after enjoying the fruits of
20 its underpricing in 2003, Aqualon went along with the
21 price increase.

22 I know, as vice president of sales of
23 Noviant, I did not cause material injury to Aqualon by
24 dumping. I think that if you look carefully at how we
25 do business, you'll come to the same conclusion.

1 Thank you for your kind attention, and I'm available
2 to answer any questions.

3 MR. CLARK: Thank you. Now, Mr. McKenzie?

4 MR. MCKENZIE: Mr. Chairman, Commissioners,
5 good afternoon. Am I too loud there?

6 MR. CLARK: No. You're just fine.

7 MR. MCKENZIE: As I said, my name is Ken
8 McKenzie. I was the director of new product
9 development during the period of investigation, and
10 I've been with Noviant in its various forms for over
11 20 years. I came over in 1991 to set up Noviant's
12 sales and technical service and marketing operation in
13 Atlanta, and that was when we first commenced our
14 assessment of the U.S. market to determine whether
15 this afforded us an opportunity for business.

16 In the course of our initial investigations
17 in North America, we talked to a lot of people, and
18 the words "Aqualon" and "arrogance" were used
19 frequently in the same sentence, and there was an
20 unmet need from the U.S. industries of tech service
21 and technology development. And we worked with a lot
22 of multinationals, and a lot of our business
23 development through the nineties and that we currently
24 enjoy now has been driven by working with
25 multinationals in technology and product development

1 to meet the demands and the functionalities which they
2 assess in their consumer markets. This had the effect
3 of increasing the total market for CMC in North
4 America, not by supplanting U.S. production.

5 We can also confirm that we were also
6 involved in the reverse auction by Procter & Gamble
7 that elicited such interest this morning, and both
8 accounting and I were involved in that, so we would be
9 happy to answer that in more detail as far as we can
10 in the question-and-answer session.

11 I would like to touch on some more points on
12 the technological area, and the first one is the
13 notion of Finland becoming a producer of food-grade
14 CMC. We find that quite ridiculous, and we're not
15 sure why there is such a fixation on the potential for
16 Finland producing food-grade CMC when we have two
17 other factors which are certified as GMP in the
18 Netherlands and Sweden which can happily supply the
19 market.

20 We were very gratified to read in the
21 Aqualon brief that they do consider us the world-class
22 producer of CMC. Being a supplier to the food
23 industry from Finland would signal a total turnaround
24 in Noviant's strategy. We estimate that the timeline
25 to complete that, if we chose to do so, would probably

1 be in the region of 12 to 18 months and involve some
2 several million dollars of capital expenditure.

3 The key areas that we would have to consider
4 if we wanted to turn Noviant-Finland into a food-grade
5 production plant are segregation of the production
6 lines, storage, packaging, and the actual
7 certification bodies themselves. We use the American
8 Institute of Baking as our certification body, and
9 they do annual audits with us. We are also audited by
10 our Swedish and Dutch plants by several customers
11 annually also for toothpaste and food.

12 As Dick also said, it's such a fragmented
13 product base, that this would have a huge impact on
14 our production efficiency by making very small,
15 fragmented runs, and the raw material, cellulose, that
16 we use for different types of product, we would have
17 to store many more types of cellulose in our finishing
18 operation than we currently do.

19 One of the other key issues we have seen
20 relates to the issue of substitutability, and this is
21 in regard to the CMC substituting other hydrocolloids,
22 CMC supplanting other CMCs, and other hydrocolloids
23 supplanting CMC.

24 In the food area, CMC is very rarely used
25 alone as a hydrocolloid. It is generally part of a

1 total package involving several, and there can be as
2 much as five hydrocolloids in the same single product,
3 as you will see from the labels. Therefore, the price
4 of each particular hydrocolloid and the functionality
5 that it delivers has a fairly significant impact on
6 how they choose the hydrocolloid balance.

7 There are a number of other blenders that
8 take hydrocolloids, blend them together, and have
9 several different formulations to deliver the
10 functionality and the end-use requirement, but they
11 will all have different price bands so that any
12 particular significant move on pricing of one
13 hydrocolloid, they can switch formulations to another.

14 This was typified fairly recently when
15 Kraft, in their Philly Cream Cheese -- this was very
16 much a locust bean gum functionality, but locust bean
17 gum is very volatile, being a crop, and when the price
18 escalated rapidly, very soon, Kraft had a new Philly
19 Cream Cheese on the shelves, including both xanthan
20 gum and guar gum, which gives some indication that if
21 the price is strong enough, the food companies can
22 move fairly quickly to create other substitution
23 patterns.

24 Therefore, CMC in food can come under severe
25 pressure, depending on the price movements of other

1 competing hydrocolloids for the functionalities.

2 Another issue in terms of substitutability
3 would come in the paper industry, and these can be
4 price movements in areas where they are not directly
5 related to the hydrocolloid itself or CMC
6 particularly. Recently, with the very strong price
7 movements in oil, petrochemical-derived products, such
8 as synthetic latex that's used for paper coating, have
9 a big impact, and unfortunately, the latex is not 100-
10 percent substitutable by other products.

11 Therefore, since it contributes to 55
12 percent of the cost of the raw materials in the
13 formulation, they have to look for other means of
14 reducing the cost. This is frequently then directed
15 at rheology modifiers, such as CMC or such as starch
16 or such as polyvinyl alcohol or such as polyacrylides.
17 All of these can reduce the consumption of CMC by
18 other drivers rather than the price of CMC itself.

19 The last point I would like to touch on in
20 terms of Noviant's philosophy of products is that we
21 go more towards specialization. I think Mr. Herak
22 mentioned this morning that Noviant produced highly
23 tailored and engineered products, and we would agree
24 with that philosophy.

25 We have currently 29 active, new-product-

1 development projects. Twelve of those are
2 specifically focused on our Noviant Finland facility
3 for the paper industry and the oil industry, which are
4 the two key segments that we service from Finland, and
5 we utilize a very highly structured process that we
6 link market needs to technology, and we do this
7 through application definition, the translation into
8 the properties of the CMC we're trying to develop, and
9 into a molecular design, and if it's specifically
10 needed, we have to create a new molecule.

11 These are all focused on the delivery of
12 functionality, and most of these projects are focused
13 on applications which do not currently use CMC in the
14 attempt to drive up the total growth and the total
15 market for us in CMC globally. One case in point we
16 can work on is that a key multinational asked us to
17 develop a new CMC derivative to replace carrageenan in
18 toothpaste. Carrageenan can be very price volatile
19 and expensive, but it has, again, very unique
20 functionalities in a toothpaste which CMC doesn't
21 normally possess. So we have spent 18 months
22 developing a brand-new CMC to replace carrageenan.

23 So again we come back to the point, if the
24 price differentials between other functional
25 hydrocolloids and CMC get narrower, such that if

1 carrageenan prices come down, the whole project would
2 be jeopardized because the costs of qualification on a
3 toothpaste, perhaps over 20 or 25 different families
4 of toothpaste, and then consumer approval would make
5 the replacement of carrageenan unviable.

6 Some of the key directions we work on in
7 terms of product development are modification of the
8 cellulose backbone, manipulation of it. We create
9 additional functional groups. These have all
10 contributed to the rise in the total growth of the CMC
11 market in North America over the last five years.

12 In addition, we are developing certain --
13 they were termed this morning "crude CMCs." We don't
14 like the word "crude." We prefer to use them as
15 "technical CMCs" but of a lower purity because we view
16 these also as highly functional. "Crude" implies
17 nonfunctional and that anyone can do it.

18 These can give better cost and use profiles
19 for some of the key industries, particularly for paper
20 and oil, and we've been very successful in developing
21 IP protection on certain products for both of these
22 industries to replace purified CMC on a technical CMC
23 level.

24 Aqualon, in their brief, had stated that
25 their research and development is focused on cost

1 reduction. Noviant has R&D focused on product and
2 process development. Thank you.

3 MR. CLARK: Thank you, Ken.

4 The next two witnesses appearing with us are
5 industry witnesses or purchasers and users of CMC.
6 The first is Mr. David Goss, research and development
7 manager for West Linn Paper Company; and the second
8 will be Mr. Ray Somers, who has quite a long history
9 purchasing CMC and other materials for Halliburton
10 Energy Services and for Baroid. I'm going to ask Mr.
11 Goss to speak first.

12 MR. GOSS: Good afternoon, Mr. Chairman. As
13 I was introduced, my name is David Goss. I'm research
14 and development manager for West Linn Paper Company.

15 CHAIRMAN KOPLAN: We need to have you move
16 that a bit closer. It's hard to hear you.

17 MR. GOSS: Okay. It has to be within
18 bifocal range.

19 CHAIRMAN KOPLAN: I've got bifocals myself.

20 MR. GOSS: (Laughter.) I have held that
21 position since 2003. Prior to my current position, I
22 was the plant manager for a paper mill in Portland,
23 Oregon.

24 I have worked in the paper business since
25 1978. My purpose in appearing today is to share with

1 you our perspective and the role that Noviant has
2 played in the paper segment of the CMC market in the
3 United States, the market in which we participate.

4 When I first came to West Linn, CMC was not
5 part of our production process. Starch was the
6 dominant material for our coating recipes. Coatings
7 are a critical aspect in the production of fine-coated
8 papers. In coatings, we are looking for consistent
9 properties and materials that will produce both a
10 smooth, even coating with good adherence at our
11 optimal running speeds, what is sometimes referred to
12 as "runability" in the industry.

13 In 1998, we heard in the marketplace that
14 CMC was a potential replacement for starch and that
15 some paper mills were beginning to use CMC in their
16 coating applications, particularly in high-carbonate
17 coating formulations. We researched CMC and then
18 reached out to two of the suppliers, one of which was
19 Hercules, and the other was Noviant.

20 We asked both of the firms to meet with us,
21 and we examined samples of their products and also
22 spoke to them about the applications. We did some in-
23 house testing. Both companies did some testing on
24 their own.

25 At some point, we decided to run machine

1 trials, but we did not run any machine trials with the
2 Aqualon product because it didn't meet our consistency
3 and quality specs. We weren't actually able to
4 duplicate some of the testing results that were
5 advertised by Aqualon at that time. The Hercules
6 branch actually was servicing our mill at that point.
7 At the end, we could not qualify Aqualon to reach the
8 confidence level that we had with Noviant.

9 In the course of our discussions with
10 Aqualon and Noviant, we were not limited to just
11 technical and performance issues. A perfect technical
12 solution also must make commercial sense. Because
13 starch is much less expensive than CMC, CMC's
14 performance had to be substantially better than starch
15 to offset the greater costs.

16 Our commercial discussions with Noviant and
17 Aqualon were very similar. In fact, there was no
18 difference in pricing when we initially examined both
19 products. So we were left with the following
20 situation: In Noviant, we had a supplier whose
21 product worked as advertised, was obviously committed
22 to the paper industry, that was running a cutting-edge
23 research lab, and I can provide more details as to the
24 level of expertise that they have in that area, and
25 whose lead sales managers were focused on the paper

1 industry and had personal experience in mill
2 operations, which, in our industry, that's highly
3 valuable.

4 Hercules was offering a product that was not
5 working the way they told us it would and whose test
6 results we could not duplicate. The choice was
7 obvious, and we have been using Noviant CMC since.

8 The story doesn't end there, of course.
9 Today, we rely heavily on Noviant as a strategic
10 partner. The statements I heard earlier about
11 Noviant's commitment to customer support, innovation,
12 and technical know-how, and what they referred to as
13 "value added" or "value end use" is true. I cannot
14 count the number of times I've turned to Noviant, as a
15 plant manager and now R&D head, for assistance in
16 improving our mill processes or looking at, in my
17 case, new products for our mill to sell.

18 That level of support is not available from
19 any other vendor. Noviant's commitment to provide
20 customer-centric support and innovation is the reason
21 we chose Noviant to be our CMC supplier. Although
22 others have sought to qualify as a CMC supplier at
23 West Linn, the reality is that no one else has been
24 able to meet our requirements. We have actually run a
25 long-term trial with another supplier, "long-term,"

1 relatively speaking, but they weren't able to meet the
2 quality and performance specifications.

3 Our position and, by extension, the position
4 of others in the industry is not one of simple price
5 sensitivity. Performance is a critical attribute. To
6 us, I believe, and other users in the paper industry,
7 CMC is not a mere commodity; it is an integral
8 ingredient in our coating formulations. It is a
9 critical supply chain of material that Noviant meets
10 and exceeds our needs for that critical material based
11 on quality and not on price.

12 One final point: There are competing
13 alternatives to CMC in our coating applications. We
14 have used other technologies, -- acrylic thickeners,
15 CMS, which is a carboxymethyl starch; ethoxylated
16 starches -- but those materials don't match CMC's
17 performance. Nevertheless, we do follow the prices of
18 those products, and if the prices move, the
19 performance advantage that CMC enjoys could be
20 overcome.

21 Thank you for your attention today, and I'll
22 do my best to answer any questions that you may have.

23 MR. CLARK: Thank you. Now, Mr. Somers?

24 MR. SOMERS: Good afternoon, Chairman and
25 members. My name is Ray Somers.

1 At the start of July 2004, I retired from
2 Halliburton Energy Services as senior procurement
3 materials manager. In this position, I was
4 responsible for purchasing up to \$500 million annually
5 of chemicals and related materials for our drilling-
6 fluids market, which also included CMCs. I operated
7 as lead procurement from Baroid, starting in 1981.
8 Baroid was acquired by Halliburton when they purchased
9 Dresser Industries in the mid-nineties. I have worked
10 in this industry for over 45 years and have dealt with
11 Aqualon off and on since the early eighties.

12 In the late 1970's, due to Aqualon's abuse
13 of sole-source position brought on by their exclusive
14 trade name position with their distributor, Baroid
15 committed funds to hire scientists to develop a CMC
16 product line and to build CMC production. Before
17 building a new plant, we elected to JV a plant with
18 Procter & Gamble, to rehabilitate a technical CMC
19 plant in Tennessee where we could manufacture a
20 product in our trade name bag. We struggled with this
21 plant to develop a product that we felt the industry
22 needed and eventually closed it down.

23 But at the same time, a Japanese producer
24 entered the U.S. market and offered us assistance in
25 developing a product at a competitive price, at which

1 time we began purchasing product from them and
2 introduced a Baroid trade name product both in the
3 United States and worldwide. Aqualon and their
4 exclusive distributor sought to defend their trade
5 name position and refused to sell product to us per
6 our specification.

7 After we created a market for our product,
8 both here in the U.S. and worldwide, they did come
9 back and agree to supply product. This was in the
10 late eighties.

11 In the early nineties, however, a group of
12 Aqualon officials from Hopewell came to our offices in
13 Houston and told Baroid they were no longer interested
14 in supplying Baroid trade name products; however, they
15 would continue to supply HEC, which had limited
16 competition and higher markets. This was probably
17 brought on by their decision to try to develop an
18 Aqualon trade name product for the drilling
19 industries.

20 At this point, Noviant came into the U.S.
21 market and also offered to manufacture product to our
22 spec. The experience with Aqualon was completely
23 different. They not only helped us develop and
24 improve our specification, develop new applications,
25 undertake joint product development, and they also did

1 research in developing testing and quality control.
2 This was a breath of fresh air.

3 Later, after Aqualon had limited success
4 developing their trade name product, they came back
5 again and offered to supply a portion of our needs.
6 They have never offered to supply totally our
7 requirements for the U.S., let alone worldwide. They
8 offered an attractive price and bought back into the
9 market.

10 In the late nineties, the cycle repeated.
11 Aqualon faded away around 2001, shut down their oil
12 field sales market in Houston, and stopped supplying
13 Baroid. We assumed it was because of a lack of
14 capacity, and there were other markets with greater
15 margins.

16 We did not hear from Aqualon again until
17 2003, and actually we had very little sales contact,
18 at which time Baroid contacted Aqualon and asked if
19 they might have product for this market. They agreed
20 to supply and again bought back in for market share.

21 The pattern here is clear: Aqualon supplies
22 this market when it meets their needs, and when food
23 markets are down, but when food prices in others go
24 up, they withdraw. The most recent example was in the
25 2003 period, the very period they are complaining

1 about.

2 Aqualon simply is not a good market steward
3 for the oil field. They have not invested in CMC.
4 They have not committed to the drilling sector, and
5 they have elected to send salesmen who do not call
6 regularly or are interested in or understand the
7 market. The only thing Aqualon has brought to the
8 market since the late seventies is a low price.

9 Given its history, we were stunned when
10 Aqualon accused quality suppliers with track records
11 committed to this market of undercutting when, for
12 the past 30 years or less, their dealing is price
13 alone.

14 Thank you very much. I'll be happy to
15 answer any of your questions.

16 MR. CLARK: Thank you. Our last witness is
17 Mr. Bruce Malashevich of ECS.

18 MR. MALASHEVICH: Good afternoon, Mr.
19 Chairman and members of the Commission. Bruce
20 Malashevich, consultant to Noviant Companies.

21 I would like to make just a few general
22 points in my affirmative testimony today, to the
23 extent permissible in this public forum.

24 The bulk of Petitioners' brief regarding
25 injury and causation attempts to square the following

1 circle; that is, how subject imports sold in what
2 Petitioner claims to be a commodity market could
3 possibly have depressed prices or otherwise caused
4 material injury while losing market share in every
5 single year of the POI. The imports' share steadily
6 fell not only in the U.S. market as a whole but also
7 in each of the individual end-use categories -- a very
8 unusual development, in my experience.

9 I looked but could not find a single
10 Commission affirmative final determination with this
11 fact pattern of continually declining market share of
12 subject imports. The principles of mainstream
13 economics teach us that in a commodity market the
14 supplier gaining relative market share could have done
15 so only by undercutting the competition with lower
16 prices. So if you accept Petitioners' theory, it
17 follows that only the domestic industry and possibly
18 nonsubject imports, not subject imports, caused prices
19 to fall.

20 This morning, Commissioner Miller very
21 pointedly invited Petitioner's witnesses to square
22 this circle and explain how subject imports could have
23 steadily lost market share while allegedly
24 aggressively undercutting. Mr. Herak, who I have to
25 say is one of the most articulate witnesses I've ever

1 seen testify before this Commission, spoke but never
2 answered your question.

3 Petitioner attempts to overcome this
4 contradiction in its theory by asking that the
5 Commission extend the POI backward to include 2001 and
6 citing the pattern of changes in subject import market
7 share from the record of the recent Canadian Wheat
8 case and the case of PET Film from India and Taiwan.

9 It's well known, of course, that the
10 Commission rarely departs from its traditional POI,
11 and there is no reason to do so in this case. Please
12 refer to my one exhibit, which is a timeline of
13 significant events in the last several years.
14 Basically, you don't need to reach back to 2001 in
15 order to address all of the events that really
16 mattered.

17 As for the two other cases cited on page 32
18 of Petitioner's prehearing brief, the facts are
19 clearly different from this case. Having studied the
20 relevant statistics on market share in those cases,
21 subject import market share declined in the last year
22 of the POI, but it actually increased over the POI as
23 a whole. There was not this steady progression that
24 you see in the current case. As I just discussed, the
25 changes in subject market share were very different

1 during the POI in this case, a situation that would
2 not change even if the Commission agreed to include
3 the data for 2001.

4 Petitioners also argues that having dropped
5 prices to increase sales volume, its prices and
6 profitability remained depressed over time because
7 import prices fell still faster.

8 As Noviant's pre-hearing brief details at
9 pages 36 and 37, the facts concerning trends in prices
10 over time do not support Petitioner's argument, nor
11 does the record in connection with the commission's
12 traditional underselling analysis. Noviant's
13 pre-hearing brief at pages 32 through 36 and Exhibit 9
14 makes a compelling case for why the price comparisons
15 in this case, as mixed as they are on their face, do
16 not portray the proverbial apples to apples
17 comparisons.

18 We would be happy to submit Noviant's
19 transaction specific data used to compile Exhibit 9
20 should the commission find it useful and assuming that
21 the same request is made of Petitioner.

22 Joined upon other pricing data in the record
23 particularly through reference to individual
24 purchaser's questionnaires submitted to the
25 commission, a very different pattern of price

1 comparisons emerges. This pattern is discussed at
2 pages 35 through 37 Noviant's pre-hearing brief.

3 It is more consistent with the observed
4 changes in relative market shares of consumption
5 during the POI and the commission should draw the
6 appropriate conclusions with regard to the
7 underselling issue.

8 Finally, on the subject of price effects,
9 the commission should be guided by the results of
10 staff's investigation Petitioner's alleged claims of
11 lost sales and lost revenue. Certainly if you
12 consider Petitioner's claim that it lowered prices and
13 sacrificed profits in the interests of gaining volume
14 relative to subject imports, there should be an
15 abundance of verifiable instances of lost sales
16 totalling large sums of dollars. That, in effect, is
17 their entire case. But if you sprinkle in this time
18 line the handful of verified instances, you'll find
19 they are few and far between and not at all consistent
20 with Petitioner's story.

21 Petitioner actually withdrew from the record
22 certain of the instances claimed in the preliminary
23 phase and submitted no new ones.

24 Again, referring to Respondent's public
25 Exhibit 1, the time line you will see the theory of

1 the case simply does not align with the actual events
2 during the POI.

3 My final point concerns Exhibit 5 of
4 Petitioner's pre-hearing brief which attempts to
5 support its calculation of selling general and
6 administrative expenses as reported to the commission
7 in Aqualon's domestic producers questionnaire. I note
8 that the title uses the word selected in describing
9 the list of companies shown, but there's no
10 explanation of the selection criteria. Most of the
11 companies shown in the list such as DuPont are much
12 larger companies than Hercules and are hardly
13 comparable. There also is no indication of how the
14 data would change after accounting for any of the
15 companies listed non-recurring gains or losses to the
16 extent they were incurred.

17 In sum, the data in Petitioner's Exhibit 5
18 should be given no weight, although I note in passing
19 that the exhibit actually supports Noviant's view as
20 articulated in its pre-hearing brief at page 40 that
21 Petitioner's SGA ratio as reported to the commission
22 is excessive.

23 Considering the substantial controversy
24 surrounding Petitioner's calculation of SG&A and
25 Petitioner's treatment of operating expenses resulting

1 from the closure of its MCA production facility,
2 Petitioner's calculation of operating profit is
3 necessarily an uncertain result. It's a very fuzzy
4 number at least. Thus, I would strongly advise the
5 commission to focus instead on the trend in
6 Petitioner's gross profit dollars over the POI, not
7 operating income.

8 In closing, I would like to emphasize once
9 again that I could find no instance where the
10 commission made a final affirmative determination
11 which subject imports having lost market share in
12 every year of the POI and in every market segment
13 measured. There is no reason to depart from this
14 practice in this case.

15 Thank you.

16 MR. CLARK: Mr. Chairman, that concludes our
17 direct testimony. We'd be delighted to take questions
18 from members of the commission and the staff.

19 CHAIRMAN KOPLAN: Thank you.

20 We're not going to hear from --

21 MR. NEELEY: Yes, I would think that you
22 would probably want to hear from us and the do all the
23 questions at once. If you would like to do that,
24 we'll be glad to give our testimony.

25 CHAIRMAN KOPLAN: Why don't you do that?

1 MR. NEELEY: All right. I'm here today --
2 again, Jeff Neeley from Greenberg Traurig. I'm here
3 today with Mr. Corrado Piotti, who is the Commercial
4 Director of Quimica Amtex, and Mr. Volker Nessel, who
5 is the General Manager. The direct testimony will be
6 given by Mr. Piotti.

7 Corrado?

8 CHAIRMAN KOPLAN: You may proceed.

9 MR. PIOTTI: Good afternoon. My name is
10 Corrado Piotti and I am Commercial Director of Quimica
11 Amtex, the only producer of CMC in Mexico. Thank you
12 for giving me the opportunity to speak today. As I
13 said when I testified in the preliminary conference in
14 this case, our company was quite surprised to be named
15 as a respondent in this case for a number of reasons.
16 It appears that Mexico was just added at the last
17 minute before the petition was filed.

18 When we look at the competitive situation
19 regarding Mexico, it is clear that there is no reason
20 to cumulate Mexico with other countries since imports
21 from Mexico are not having any real adverse
22 competitive effect on Aqualon.

23 It is clear from the petition that Mexico is
24 not the real target of this case. The commission
25 should not include Mexico in this case when its

1 situation is totally different from that of the other
2 subject countries. Our company feels that it is being
3 caught between the giants of the industry and has been
4 added as a Respondent when it is simply reacting to
5 the moves of larger players.

6 I want to discuss several points today. The
7 main points that I want to make today are as follows:

8 First, U.S. imports from Mexico of purified
9 CMC have been declining from 2002 to 2004.

10 Second, Amtex overwhelmingly serves markets
11 in a way that does not compete with Aqualon. Rather
12 than competing on price Amex fills the role of a
13 conveniently located alternative source that offers
14 customers CMC when they do not want to rely on a sole
15 source. Furthermore, we find that almost no customers
16 want to rely only on a sole source of supply. For the
17 vast majority of our sales, we serve an exclusively
18 import market and have no adverse effect on Aqualon.

19 Third, there is no excess capacity in Mexico
20 for purified CMC.

21 Each of these main points needs to be
22 understood within the context of what the commission
23 calls "conditions of competition." I believe that the
24 following conditions are most important for the
25 commission to consider.

1 First, we need to recognize that there is
2 only one U.S. producer of purified CMC and that very
3 few purchasers are going to rely on a sole source of
4 supply. Thus, some foreign CMC is going to be
5 purchased in the U.S. Obtaining this second source of
6 supply is a non-price reason for the purchase of
7 foreign CMC.

8 Second, it is very important that purchasers
9 have supply available on short notice. The commission
10 staff report recognizes that availability is the most
11 important factor in purchase decisions. Of course,
12 since Mexico is right next to the United States, this
13 works to our advantage compared to the European
14 suppliers. For many purchasers, Mexican CMC acts as a
15 back-up supply. While we do have some customers, such
16 as Azteca, which have long-term agreements, the
17 geographical advantage of Mexico often allows us to
18 compete based on quick availability rather than price.

19 Third, a very important condition of
20 competition in this industry is the necessity of
21 qualifying a product for the customer, particularly in
22 the food segment of the market where we do the
23 overwhelming amount of our business. As I will
24 discuss in a moment, our largest customer, Azteca,
25 will not purchase from Aqualon for performance

1 reasons. From time to time, it also works the other
2 way and Amtex is not able to be qualified by a
3 purchaser. This necessity of qualification severely
4 limits any possible Mexican competition with Aqualon.

5 Fourth, a fourth condition of competition is
6 that Amtex sells much more of its purified CMC through
7 distributors than does Aqualon. Outside of our
8 largest customer, Azteca, most of our U.S. sales are
9 to doctors.

10 Fifth, a fifth condition of competition is
11 that other products, such as technical CMC, sometimes
12 can be substituted for purified CMC, so prices and
13 competition can be affected by these products as well
14 as by purified CMC itself.

15 Let me start with the actual exports of the
16 subject merchandise from our company and who they
17 compete with in the U.S. market. First, as you will
18 see from our questionnaire response, which shows that
19 Amtex exports to the U.S. from Mexico were almost the
20 same quantity in 2004 as in 2002. Because the market
21 in the U.S. has been growing, this means that the
22 Amtex market share in the U.S. has been falling. In
23 reality, a growing U.S. market, this loss of market
24 share is inevitable since Amtex is operating at full
25 capacity. While, in theory, we might shift some sales

1 from the Mexican home market to the U.S., this in fact
2 would be very shortsighted. We cannot abandon our
3 long-time customers in our home market.

4 An important part of the Amtex story is the
5 import niches of the products that we sell to the U.S.
6 To understand why Amtex fills certain niches and why
7 we are not affecting the volume or prices of Aqualon
8 we need to go back to those conditions of competition.
9 In most instances, our products simply do not compete
10 with Aqualon. In our brief, we have discussed each of
11 our customers in the U.S., since there are very few
12 customers. The customers are either end-users or
13 distributors. For the end-user, there is virtually no
14 overlapping competition with Aqualon. The
15 distributors, on the other hand, are purely an
16 importing channel of trade and there is no real
17 possibility that Aqualon could sell to the
18 distributors. While, in theory, there might be
19 competition between Aqualon and the distributors'
20 customers, which are end-users, we believe that the
21 facts will show that this is not occurring either.

22 The largest customer of our company, from
23 the very beginning of our exports to the U.S., has
24 been Azteca, which is a producer of tortillas. We
25 developed a product especially for Azteca's Mexican

1 affiliate and have worked with that customer for many
2 years. We began to sell in the United States in the
3 early 1980s to Azteca because we had been a reliable
4 supplier for many years to its sister company in
5 Mexico. In the early 1990s, Aqualon took a
6 substantial amount of Azteca's purchases away from us
7 at lower prices. However, Azteca experienced severe
8 performance problems with the Aqualon product. Since
9 the time of those problems, Aqualon has been banned
10 from selling to Azteca. Thus, it is the qualification
11 process that has prevented Aqualon from competing for
12 Azteca, not price.

13 The overwhelming volume and value of our
14 sales over the period 2002 to 2004 were to Azteca,
15 whose group is the largest food CMC consumer in the
16 world. Recently, we have lost some sales of this
17 customer, both in the U.S. and in Mexico, to a
18 European producer because of low prices, but this is
19 purely an import market since Azteca has been very
20 clear that it will not purchase from Aqualon due to
21 the performance of the product.

22 Our second large customer over the period of
23 investigation has been S&G Resources. S&G is a former
24 distributor of Noviant which became a distributor of
25 Amtex about ten years ago when Noviant began its own

1 direct distribution of products in the U.S. This
2 customer is only an importer and there is no
3 possibility that it would purchase from Aqualon. In
4 our view, if for some reason S&G could not purchase
5 from Amtex it would turn to Asia or to some other
6 foreign supplier.

7 As we discuss in our brief, we do not think
8 that S&G is competing for the end-user business based
9 on price, but rather on the availability of supply and
10 logistics.

11 Halliburton is a customer that we sell to
12 regularly in Mexico but has not been a regular
13 customer in the U.S. The oil field sector is a sector
14 of the market that we very rarely sell to in the U.S.
15 However, we did sell a small quantity to Halliburton
16 in the U.S. in 2004, which was the only sale that we
17 made to the oil field sector in the U.S. in the last
18 five years. In 2004, we had lost a significant sale
19 for our main U.S. customer, Azteca, to a European
20 company. As I stated before, Azteca will not purchase
21 from Aqualon so this is purely an import customer.

22 When we lost this sale in the U.S., we
23 naturally began to see if there were other U.S.
24 customers who would pay a reasonable price for
25 purified CMC. Since halliburton already was a

1 customer in Mexico, we began discussions with that
2 company. When we negotiated the price we understood
3 that Halliburton was trying to obtain an alternative
4 source of supply close to home. We used that fact to
5 obtain a slight price premium over the competition.
6 It was important that we obtained this premium to make
7 the sale since our logistical advantage should enable
8 us to make U.S. sales at good prices. The Halliburton
9 sale in 2004 was an event that did not repeat itself
10 in 2005 since Azteca provided us with more orders and
11 our priority was to serve this largest customer with
12 our limited capacity.

13 Another U.S. customer is another
14 distributor, P.L. Thomas. Based on my conversations
15 with that customer, I know that the overwhelming
16 amount of its sales was to TIC Gums. This customer
17 came to be a consumer of Amtex CMC through its
18 purchases from P.L. Thomas over ten years ago at a
19 time when TIC Gums was looking for an alternative
20 source of supply and its main supplier, Akzo, had some
21 problems in its plant in the Netherlands. TIC Gums
22 has been a consumer of Amtex CMC ever since and price
23 has not been the main reason for this longstanding
24 relationship.

25 We also have covered the threat issue in our

1 brief. Because we are operating at full capacity and
2 other reasons, we believe that it is impossible to
3 conclude that we are a threat to the U.S. industry.
4 We think that it is very strange that we are named as
5 a respondent here when we have been only a small and
6 steady supplier to niche import markets.

7 I thank you for your attention and I will be
8 glad to answer any questions that you may have.

9 MR. NEELEY: That ends our testimony.

10 Thank you.

11 CHAIRMAN KOPLAN: Thank you. Thank you all
12 for your testimony this afternoon.

13 We will begin the questioning with
14 Commissioner Hillman.

15 COMMISSIONER HILLMAN: Thank you. I would
16 like to join my colleagues in welcoming you all and
17 thanking many of you that have traveled a long way to
18 be here with us. We very much appreciate all of the
19 information that you provided as well as your
20 willingness to spend the day helping us understand
21 your industry.

22 Perhaps if I could start with you,
23 Mr. Huizinga, just to understand the corporate
24 relationship of this company. You've described in a
25 fair amount of detail how your operations work, but

1 I'm trying to make sure I understand whether the
2 corporate parent is in part dictating this issue that
3 the Finnish production would be largely for the paper
4 and the oil field and in essence the nature of the
5 products produced in the Netherlands versus Finland,
6 versus Sweden. Is that decided at a corporate parent
7 level and conveyed down to each of the individual
8 production facilities or how does that process work in
9 terms of product mix?

10 MR. HUIZINGA: That's a good question.
11 Primarily, yes. Since we have three production mills,
12 as I stated, in Holland, Sweden and Finland, I think
13 in '87 we got a Dutch mill, it was acquired. In '93,
14 '92, we acquired the Swedish mill. Quickly after
15 that, actually, we adopted the same strategy,
16 dedicating products and grades to certain mills. So
17 making in that sense, for example, what Mr. Herak was
18 describing this morning, that he has a long cycle of
19 production, the low to high viscosity which takes
20 about somewhere like 30 days, for example, so that we
21 would actually have no effect on that. So we have in
22 that sense dedicated grades to certain mills. For
23 example, to indicate that, industrial grades like
24 paper and oil drilling, for example, for paper,
25 they're low viscosity grades but they're specifically

1 dedicated, say, to the Finnish mill, making also that
2 we have lower or lesser changes in production and
3 therefore also can run more efficient and therefore
4 also can produce actually on order as we get them from
5 our customers.

6 COMMISSIONER HILLMAN: And how specific is
7 it? I mean, for example, if there is an increase in
8 demand in one of the sectors, again, is it sort of at
9 a parent corporate level that the decision is made to
10 ramp up production at one particular mill versus
11 another? I'm trying to understand at what level of
12 detail. I mean, a given order comes in and a decision
13 has to be made where to produce the product. Is that
14 done at the parent level or is each individual
15 facility making its own decisions about its production
16 schedule?

17 MR. HUIZINGA: I would say it's a
18 cooperation of both, it's a bit of both in that sense.
19 But definitely also I would say from corporate level
20 it's managed to secure that things make sense and that
21 things also remain efficient. Yes.

22 COMMISSIONER HILLMAN: Okay. So a daily
23 production schedule maybe not, but an overall
24 production schedule in terms of what grades and
25 products are produced where is decided at a corporate

1 level?

2 MR. HUIZINGA: Yes. But also I think you
3 have to understand that many grades are not so easily
4 to be changed from one mill to another mill because
5 also we have to deal of course that when we supply
6 products from mill A, for example, it does not mean
7 that it is exactly the same as the product from mill
8 B, so we cannot always supply that so easy, exchange
9 that to a customer without having gone through an
10 approval procedure. So in case we want to do -- if
11 you would want to do so, it takes still a process
12 which you have to manage because you have to get
13 approvals from customers.

14 COMMISSIONER HILLMAN: Mr. McKenzie, did you
15 want to add something?

16 MR. MCKENZIE: Yes. Let me try to perhaps
17 make some clarifications. The three mills are
18 radically different and we've made them that
19 deliberately so that both the Dutch and the Swedish
20 mills can produce the food certified or toothpaste
21 certified food grades, the 99.5 percent purity. The
22 Finnish mill doesn't. Through our continual
23 forecasting and enterprise resource planning, we will
24 be running forecasts and producing weekly production
25 plans for each of the mills. The Finnish mill

1 concentrates only on a few grades or a few application
2 areas, so we know very well where we're going to put
3 all the specific customers for specific applications
4 to which mill. So the Dutch mill will concentrate on
5 high viscosity, high molecular weight food and pharma
6 grades, the Swedish mill will concentrate more on the
7 medium molecular weights for food and toothpaste, and
8 the Finnish mill concentrates on the high volume
9 specialty industrial applications such as paper and
10 oil. So we know exactly pretty much where every order
11 is going to go, to which mill, and we do that weekly.

12 COMMISSIONER HILLMAN: That's very helpful
13 on the production supply side. How about on the price
14 side? Again, who is setting the prices in the U.S.
15 market for product coming out of each of the three
16 different mills? Is that, again, corporately set or
17 how do you determine what the prices are going to be
18 across the three mills?

19 MR. HUIZINGA: In that sense, I feel it also
20 relates a lot to how the sales organization is
21 organized, which we have, so we have specialized sales
22 organizations, one, for example, which is responsible
23 for the sales of all grades to the oil grade industry
24 on a global basis. We have a paper team which is
25 responsible for the sale of the paper grades to the

1 industry and also that we have people for regulated
2 and people for industrial applications. So they are
3 segmented in that sense.

4 In the U.S., specifically besides that we
5 have a sales office which is responsible for the sales
6 results on the U.S. market and the price is set for
7 the U.S. market, and I'll have to make one exclusion
8 of the old drilling industry because, like I said,
9 that's a global organization, that's a separate
10 organization handling oil drilling sales into the U.S.
11 and the sales office in the U.S. is dealing with all
12 the other applications.

13 The basic decisions are being made by the
14 sales organization which is present in the U.S.,
15 although in that sense also management, in that sense
16 also me, involved in the price setting of the
17 products.

18 COMMISSIONER HILLMAN: Just so I understand
19 it, for a particular customer, a particular grade of
20 product, even though it could be -- you're suggesting
21 it's not normally, but if it were produced by both,
22 say, the Swedish and the Dutch facility, presumably
23 you would be pricing it the same. In other words, the
24 customer would not necessarily pay a difference in
25 price depending on which facility it was produced at.

1 MR. HUIZINGA: Well, I would not say so. In
2 that sense, of course, I would say you still take
3 consideration of the capabilities of the mill and also
4 the cost structure of the mill in order to determine
5 your price setting.

6 COMMISSIONER HILLMAN: Okay. But are there
7 some grades of some product that are produced in more
8 than one place or is there absolutely no overlap in
9 production among the three facilities?

10 MR. HUIZINGA: I would say between the
11 facilities there is a small overlap in grades.

12 COMMISSIONER HILLMAN: Okay. And, again,
13 for that overlapped product, would there be a
14 difference in price depending on which facility
15 produced it?

16 MR. HUIZINGA: The overlap in products is in
17 that sense that there is an overlap of products being
18 produced, for example, would be produced or is
19 produced in either or the other mill. It does not
20 mean that also in that sense that we can supply those
21 products to the customers. I think that is very rare.
22 In the case that so happens, then in that sense it's
23 more like a side step because of an emergency
24 situation. They would not really change the price
25 setting. No.

1 COMMISSIONER HILLMAN: Okay. Now, the other
2 thing I wanted to make sure I understood is this
3 degree of the specialized nature of the product. Part
4 of it is I'm trying to make sure I understand from
5 your testimony, you described a lot of the technical
6 support and the development of the product and a lot
7 of these products were very unique and specifically
8 developed for a particular customer for a particular
9 application, which to me then feels very much like a
10 specialized product. And on the other hand you're
11 describing to some extent in particularly the Finnish
12 facility long production runs, longer production runs,
13 which, again, to me would feel like at least a portion
14 of the product is, I'm not going to all the way to say
15 commodity, but is more of a large volume, large sale
16 kind of product.

17 I'm trying to understand from your
18 perception of the U.S. market what portion of it do
19 you think is more in this very unique specialty
20 individual kind of product versus what portion of the
21 market is more commodity-esque, is more of these long
22 production run, high volume, same product.

23 MR. MCKENZIE: Let me try to answer that.
24 We view the commodity segment of the global market as
25 the areas of textiles, mining and detergents, which

1 pretty much use fairly standard materials and you can
2 do long runs. It is not a focus for Noviant and we
3 will sell to them, but it's not a strategic focus.

4 If we look at the other large volume global
5 sectors such as paper or oil drilling, these are much
6 more functional, very large businesses, so we do do
7 long production runs for production efficiency. It
8 doesn't necessarily mean that these are commodity
9 products. They are still very a specialized product.
10 Each customer has its own chemical recipe for their
11 production and to meet the specifications and
12 functional performance that they need, so in that
13 sense, the commodity sectors of the market, the less
14 interesting ones that we will do, the more strategic
15 markets where we do specialization and the ones we
16 work pretty hard on which are oil, paper, toothpaste
17 applications.

18 And referring back briefly to your previous
19 question, the small overlap we have basically works
20 with the Dutch and Swedish mills on some food grades.
21 There is virtually zero overlap between the Finnish
22 mills and the Dutch and Swedish facilities.

23 COMMISSIONER HILLMAN: I had understood that
24 from your earlier answer. Thank you very much.
25 I appreciate it.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.
2 Commissioner Lane?

3 COMMISSIONER LANE: Good afternoon.

4 Mr. McKenzie, did I understand you correctly
5 that Noviant produces mostly for the industrial
6 segment, the oil field industry and paper, et cetera,
7 and to a lesser extent CMC for the food segment?

8 MR. MCKENZIE: Yes, that's correct. The
9 food segment is one of the smaller parts of our
10 business portfolio.

11 COMMISSIONER LANE: Okay. Mr. Goss,
12 I believe you said that you are now using Noviant. Is
13 that correct?

14 MR. GOSS: That is correct.

15 COMMISSIONER LANE: And do you get all of
16 your needs from Noviant?

17 MR. GOSS: All of our CMC needs, yes.

18 COMMISSIONER LANE: And do you do that on a
19 contract basis or do you do it on a bid basis or how
20 do you make that decision?

21 MR. GOSS: That particular business is based
22 on just monthly purchases. We don't have any long
23 term contract.

24 COMMISSIONER LANE: And when you make those
25 purchases, do you compare other prices for the same

1 product?

2 MR. GOSS: Not regularly.

3 COMMISSIONER LANE: Mr. Somers, does
4 Halliburton buy all of its needs from Noviant now?

5 MR. SOMERS: No. And it has never bought
6 all of its needs from Noviant.

7 COMMISSIONER LANE: Do you buy the bulk of
8 your needs from Noviant?

9 MR. SOMERS: I'm not associated with
10 Halliburton any longer, but I do not think they are
11 the major supplier at this time.

12 COMMISSIONER LANE: Okay. Maybe I'm
13 confused. I thought you were associated with
14 Halliburton.

15 MR. SOMERS: Yes, I retired the first of
16 July, so I can only talk about for certain what they
17 did up until June 30, 2004.

18 COMMISSIONER LANE: Okay. So when you were
19 with Halliburton, would you explain to me how
20 Halliburton went about purchasing its needs for CMC?

21 MR. SOMERS: Yes. We purchased either on
22 annual or multi-annual contracts which were normally
23 bid out. Always bid out to start with. Sometimes
24 those contracts may have been rolled over. They used
25 multiple sources worldwide. We bought numerous

1 grades.

2 COMMISSIONER LANE: And were you buying any
3 of your product from Aqualon at the end of your career
4 with Halliburton?

5 MR. SOMERS: Yes, we just started again.

6 COMMISSIONER LANE: Okay. Let me go back
7 to, I guess, Mr. McKenzie or maybe Mr. Clark.

8 In Noviant's pre-hearing brief, you argue
9 that Aqualon's poor management decisions were
10 primarily responsible for the domestic industry's
11 recent financial struggles. What specific management
12 decisions contributed to Aqualon's current financial
13 troubles?

14 MR. CLARK: I'll let Mr. Huizinga and Mr.
15 McKenzie expand on this and Mr. Somers might want to
16 jump in as well, but in particular our position is
17 that when Noviant announced a price increase in the
18 second quarter of 2003 it did so on a global basis
19 including in the United States and Aqualon made a
20 decision not simply to not go along with it, but
21 actually reduce prices in the face of Noviant
22 announcing a price increase. That could fairly be
23 characterized as perhaps a management decision that
24 would have a bottom line consequence and this is
25 coming in an environment, of course, where Aqualon has

1 said, well, we think we lost a lot of volume, so we're
2 going to buy back in through price.

3 As you're going through your strategy of
4 buying in, what you allege to be the price leader says
5 I want to lead the price up, what do you do in your
6 increased volume approach? You decide not to go along
7 with that price increase, not to go along with half of
8 the price increase, to actually undercut the price
9 increase.

10 We would fairly characterize that as a
11 management decision that was perhaps inconsistent with
12 a desire to increase the bottom line of the business.

13 Maybe others here have a perspective on
14 that.

15 COMMISSIONER LANE: Mr. Huizinga?

16 MR. HUIZINGA: I do not have to say that
17 much to add that to that, in essence, to confirm it.
18 I would say we went up with the price increase during
19 the second quarter in 2003. We already faced in that
20 sense a more competitive market in the U.S. but it was
21 definitely responses from a lot of customers in that
22 sense, they were really like, well, you were undercut
23 and that the prices -- they said there was a
24 competitor on the market, really being the lower
25 prices, and also we saw that immediately by really

1 losing considerable volume in the market, specifically
2 in the U.S. and sometimes also when you talk about
3 global customers, for example, like oil drilling
4 customers which could see we immediately lost volumes
5 in certain areas as an impact of the price increase.

6 COMMISSIONER LANE: Okay. Thank you.

7 MR. MALASHEVICH: Excuse me, Commissioner.
8 Just one thing I'd like to add that these gentleman
9 would not be privy to.

10 COMMISSIONER LANE: Do you want to identify
11 yourself for the court reporter?

12 MR. MALASHEVICH: Yes. I'm sorry. Bruce
13 Malashevich with Economic Consulting Services.

14 These gentleman would not have access to
15 this information but at least one further point along
16 the lines of your question is found on pages 39
17 through 40 of the Noviant pre-hearing brief and
18 I would call your attention to that.

19 COMMISSIONER LANE: Okay. Thank you.

20 This is another questions for Noviant. On
21 page 33 of Noviant's pre-hearing brief it is argued
22 that the pricing product definitions used in these
23 investigations are too broad to create meaningful
24 apples to apples comparisons.

25 Please explain why the comparisons we have

1 in the current staff report are not meaningful
2 comparisons as well as what comparisons you would have
3 conducted in order to get what you believe would be
4 proper apples to apples comparisons.

5 MR. MALASHEVICH: This is Bruce Malashevich
6 again. I'll start out on that and invite counsel,
7 Mr. Clark, to add anything that I might have missed.

8 We very much struggled with this issue to
9 assist staff and the commission in trying to find the
10 right mix between defining products that were
11 sufficiently narrow to be considered very comparable
12 as well as being broad enough where collectively they
13 represented a substantial share of the market.

14 We also considered what we found in the
15 record of the preliminary investigation to be
16 circumstantial indications that there was a certain
17 amount of selectivity that went into which of the
18 particular products. And by that I don't mean simply
19 grades, but you heard earlier today, I think, in
20 Mr. Herak's testimony that there are families within
21 which there are all kinds of separate designations.
22 So there was a certain amount of selectivity that went
23 into the data reported in the preliminary
24 investigation that we wanted to level the playing
25 field, although I hesitate to use that term.

1 The balance we struck was what we
2 recommended in the letter to staff concerning the
3 draft questionnaire back in December or January,
4 I can't remember which, and our support for the notion
5 that the data are less meaningful than the typical
6 investigation we primarily found in Exhibit 9 to the
7 pre-hearing brief of Noviant and that exhibit, as
8 I mentioned in my testimony, is backed by the universe
9 of transaction-specific data that Noviant incurred
10 during the period of investigation and they all tie
11 into the pricing data reported to the commission.

12 There's one other point on this that
13 I wanted to clarify some confusion this morning. One
14 commissioner, perhaps it was you, asked Mr. Klett --

15 COMMISSIONER LANE: I'm generally confused,
16 so it probably was me.

17 MR. MALASHEVICH: There was a question
18 regarding our analysis of what we called
19 purchaser-specific price comparisons, that we relied
20 in the end on a sample of six customers. Mr. Klett
21 relied on an expanded sample. That decision was by no
22 means arbitrary. We learned from the record of this
23 case and in public testimony this morning and from our
24 clients that the prices individual purchasers pay are
25 sensitive the size of the purchases they make over an

1 annual period.

2 Mr. Klett's methodology relying on purchaser
3 questionnaires makes an effort, I think, a well
4 intentioned effort, to adjust for product mix, but by
5 folding all the purchasers together you don't adjust
6 for the size of the purchase.

7 So what we did is we identified those
8 purchasers that anybody reported as among the top ten
9 customers and we identified within that universe
10 purchasers that bought for all intentions and purposes
11 appeared to be the identical or very nearly identical
12 product. And the results of that are summarized in an
13 exhibit to Noviant's brief and you will see that the
14 pattern of underselling versus overselling is very,
15 very different from anything Mr. Klett prepared and
16 also in the pre-hearing report.

17 So I would urge you to pay close attention
18 to that particular result.

19 COMMISSIONER LANE: Okay. Thank you.

20 Thank you, Mr. Chairman, for letting me go
21 over.

22 CHAIRMAN KOPLAN: Certainly.

23 Commissioner Pearson?

24 COMMISSIONER PEARSON: Thank you,
25 Mr. Chairman.

1 Permit me to provide my welcome to the
2 afternoon panel. Good to have you here.

3 This morning I asked some questions about
4 the global market for CMC and so let me do the same
5 with you.

6 Is there excess capacity globally for the
7 production of CMC?

8 MR. HUIZINGA: Yes, there is.

9 COMMISSIONER PEARSON: Okay. And the
10 impression I got from this morning was that much of
11 the reason for the overcapacity is the expansions that
12 Noviant undertook in the late 1990s or in 2000. Would
13 you agree with that assessment?

14 MR. HUIZINGA: We have made in 1999 major
15 capacity investments. I would say that is true. On
16 the other hand, the plans in that sense to utilize
17 that capacity were at that time slightly different
18 than reality in that sense also came out. On the
19 other hand, we have been constantly -- because of the
20 growth in the markets, and also specific the growth in
21 the markets outside of the U.S., we have been able to
22 actually start utilizing the capacity of the
23 investments which we have been doing. Yes.

24 COMMISSIONER PEARSON: Okay. And if no
25 additional capacity is built in the world, how long

1 would it be before we would see a relatively tight
2 supply-demand balance, assuming trend growth in
3 consumption?

4 MR. MCKENZIE: I think it would depend on
5 which particular application sector because a lot of
6 the overcapacity would not meet, say, food grade
7 standards. A lot of the overcapacity would not meet
8 functionality requirements in the paper industry, but
9 it's very difficult to take a broad brush definition.
10 I would say that based on the current structure of the
11 global market, looking at the European producers,
12 North American, Asian, you could probably use up the
13 practical capacity in key segments within five years.

14 COMMISSIONER PEARSON: Okay. So it will be
15 a little while yet before we would see --

16 MR. MCKENZIE: Well, that would depend on
17 some of the active projects we have running and if
18 we're very successful with those, it will be happening
19 very much more quickly.

20 COMMISSIONER PEARSON: Sure. Of course. So
21 what have you seen in terms of price patterns
22 elsewhere in the world, perhaps in Europe or Asia,
23 other places where Noviant is active? Because what
24 I was asking about this morning, I was trying to
25 understand whether there's been some difference in the

1 price pattern that we've seen in this country versus
2 what's happened elsewhere in response to this global
3 supply-demand imbalance.

4 MR. HUIZINGA: What I can say on that is
5 that we have seen pressure on prices in more regions.
6 In that sense, of course, the growth of the years has
7 slowed down for the consumption CMC. We also have
8 seen, of course, that we have not been the only ones
9 building capacity so it's not only that we have been
10 doing that, there also has been capacity built, for
11 example, in China and in other areas, in other
12 countries and also some parts of Europe. But that has
13 led also to pricing pressure in other regions, yes,
14 definitely, in Asia, for example, but also in Europe.

15 MR. MCKENZIE: Also, additionally, the U.S.
16 consumption is roughly 15 to 20 percent of the total
17 global consumption so there are stronger price
18 patterns in other places, too.

19 COMMISSIONER PEARSON: And would you be able
20 for the record to provide some information perhaps on
21 Noviant's own pricing experience during the period of
22 investigation in other parts of the world?

23 MR. HUIZINGA: Yes. Sure. We can do that
24 in the post-hearing.

25 COMMISSIONER PEARSON: Good. I would

1 appreciate that. I'm just trying to understand how
2 different the U.S. market might have been during this
3 time compared to what was happening globally and at
4 this point it's not apparent to me, we just have some
5 anecdotal discussion about it.

6 I spoke with Mr. Herak about the question of
7 market power, trying to understand whether the
8 customers of CMC have more or less influence in
9 pricing than producers of CMC. Could you discuss
10 that?

11 How many CMC customers does Noviant have?

12 MR. HUIZINGA: I would say couple of
13 hundred. I'm pretty sure in that sense that it's
14 probably also as we sell more volume of CMC than
15 Aqualon does. The number will be higher. I don't
16 have an exact number, but it will be hundreds because
17 we sell on a global basis, totally around the globe to
18 a lot of customers worldwide.

19 COMMISSIONER PEARSON: And the number of
20 producers of CMC in the world is actually fairly
21 small? Is that correct?

22 MR. HUIZINGA: Well, as Mr. Herak said in
23 that sense, I think the absolute number of producers,
24 there will be multiple. I think only China, for
25 example, holds already say dozens of producers but a

1 lot of them too small to mention. But if you look at,
2 say, the global market, then probably you end up with
3 something like eight to ten players who somehow have
4 some volume and have also more than only a domestic
5 role but more like a regional or global role for CMC.

6 COMMISSIONER PEARSON: Okay.

7 MR. MCKENZIE: And, again, maybe I can
8 answer that. Globally, there are 48 produces of CMC,
9 excluding China, but, as Dick says, only probably 10
10 are considered operating on a global basis either
11 through multi-product capability or
12 multi-functionality capability and these are the
13 people we tend to meet in global markets, so there are
14 only 10 of the 48.

15 COMMISSIONER PEARSON: Okay. So given that
16 structure in the marketplace, what is it that has led
17 to a breakdown in discipline of pricing, if that's the
18 correct way to characterize it, and has led then to
19 the decline in prices that we've seen during the POI?

20 MR. HUIZINGA: That's an interesting
21 question and sometimes also I would love the answer
22 myself, actually. It's an interesting question.
23 I think in that sense we have been trying to also with
24 the capacity to really grow the market as such because
25 also that was a reason of growing the capacity for us

1 in 1999, seeing actually the growth pattern which we
2 have behind us which we in that sense envisioned that
3 that would continue. Not knowing, of course, that
4 2001 would be happening.

5 In the other hand, also we had at that time
6 already several products in the pipeline, new products
7 of which we have high expectations, and that's also
8 the reason why we built the capacity as such for our
9 products.

10 We have been in that sense following a
11 policy of really taking the areas where we wanted to
12 grow, for example, like the paper industry and follow
13 also there in that sense the pricing strategy. What
14 in that sense forced later on the price pressure.
15 I can have some thoughts, but I don't think it's
16 appropriate to mention that here, so I would like then
17 to come back on that in the post-hearing.

18 MR. MCKENZIE: Perhaps I can also add a
19 little to that. In addition to competition within CMC
20 producers, some key markets which are attractive and
21 Aqualon themselves tried to claw back market share
22 which is a price impact, there is also this greater
23 substitution of CMC by other competing products and
24 competing technologies. It's not only within the food
25 area that you will see the different range of

1 hydrocolloids and substitute CMC, we can see it in the
2 paper industry, we can see it in other industries. So
3 that these can threaten the technology so that starch
4 prices can be very low, sometimes PV alcohol is very,
5 very low and these can and often do a job, although
6 not as good a job as CMC but a functional job with a
7 cheaper price, so therefore that has an impact on the
8 reigning price in the markets.

9 COMMISSIONER PEARSON: Okay. And you've
10 seen some of that price competition from starch, for
11 instance, during the POI?

12 MR. MCKENZIE: Yes. Starch has raised its
13 head again, particularly in the paper industry, during
14 2004.

15 COMMISSIONER PEARSON: So which company has
16 been the price leader during the POI? It's probably
17 not fair to ask the question that simply, but what can
18 you tell me about price leadership during this period?
19 Because I think you were making an argument that
20 Aqualon had led the price down in the United States.
21 Is that a correct assessment?

22 MR. HUIZINGA: Well, as I stated, we have
23 been coming out with the price increase initiative in
24 2003 in order also to show price leadership. It was
25 in that sense being undercut. Our experience was

1 totally the opposite of what was happening in the
2 market at our customers and also visibly we could see
3 the volume going down.

4 I think in that sense it's an interesting
5 piece to say where the price leadership is and likely
6 in that sense also is maybe that you have several
7 players in the markets. For example, maybe that
8 Aqualon is more like the price leader or say the
9 leader in the American market. In that sense, they
10 may be also the one who shows that is dictating the
11 state of the price leadership at that time in that
12 sense, then, by undercutting us, making it more
13 difficult.

14 COMMISSIONER PEARSON: Okay. Thank you very
15 much, Mr. Chairman.

16 CHAIRMAN KOPLAN: Thank you, Commissioner.
17 Thank you all for your answers to our
18 questions thus far.

19 Mr. Malashevich, the time line that you
20 included on your exhibit for your testimony notes that
21 in December 2002 the Euro to dollar exchange rate was
22 one to one, I believe. Right?

23 MR. MALASHEVICH: Correct. And as of
24 today's newspaper, roughly speaking, \$1.30.
25 I actually in retrospect should have included a more

1 current exchange rate. It's really the devaluation of
2 the dollar during the intervening period was the point
3 that was intended to be made.

4 CHAIRMAN KOPLAN: Well, there is a
5 discussion of that in Chapter 5, beginning on page 3
6 of our staff report.

7 MR. MALASHEVICH: Yes. Indeed.

8 CHAIRMAN KOPLAN: My question is when
9 Noviant announces a price increase, is it in Euros?

10 MR. MALASHEVICH: I'll defer to our industry
11 witnesses on that point, if I may.

12 CHAIRMAN KOPLAN: And while I'm asking that,
13 I'm wondering whether contract prices to U.S.
14 customers are in Euros or is there any mechanism to
15 take into account changes in exchange rates?

16 MR. HUIZINGA: Our contracts to the U.S.
17 customers are in dollars.

18 CHAIRMAN KOPLAN: Are in dollars?

19 MR. HUIZINGA: Yes. And it has been from
20 the beginning like that.

21 CHAIRMAN KOPLAN: And when you announce a
22 price increase, is that in Euros or in dollars?

23 MR. HUIZINGA: normally, in that sense, as
24 we have done it, it is more like in percentages.
25 A percentage of increase, percentage of increase for

1 the announcement of the price increase, so leave it in
2 the middle where it's in dollars or where it's in
3 Euros.

4 CHAIRMAN KOPLAN: Okay.

5 MR. HUIZINGA: It's all currencies as such.

6 CHAIRMAN KOPLAN: All right. Thank you.

7 Mr. McKenzie, correct me if my recollection
8 is wrong on this, but I think you described a
9 situation in which the quantity of CMC in a food
10 product can depend on the relative price of CMC to
11 other hydrocolloids used in a blend? Is that right?

12 MR. MCKENZIE: That's correct.

13 CHAIRMAN KOPLAN: Thanks. Would the share
14 of CMC in such a blend fluctuate up and down in
15 response to changes in relative price or would the
16 blend only be changed rarely with a large change in
17 relative price?

18 MR. MCKENZIE: Not being a formula blender,
19 I can't be specific. We can get more accurate detail,
20 but from observation, we would say that it would have
21 to be a reasonable price change. Again, it depends on
22 which of the hydrocolloids.

23 CHAIRMAN KOPLAN: Do you want to do this
24 post-hearing?

25 MR. MCKENZIE: Yes. Because I can get you

1 much harder data for that rather than try to make some
2 guesses in front of you.

3 CHAIRMAN KOPLAN: Okay. Hard data is the
4 kind of thing I like getting, so if you could do that
5 for me, I would appreciate it.

6 MR. MCKENZIE: Sure.

7 CHAIRMAN KOPLAN: Thank you.

8 Mr. Piotti, at the staff conference on June
9 30, 2004, you testified that, and I quote, "In the
10 United States, we are exporting 10 type selecting
11 official CMC and except Azteca all a standard type of
12 CMC." That was at page 169 of transcript.

13 Aqualon's pre-hearing brief picks up on that
14 and at page 20 states, and I quote, "Amtex itself
15 testified that it sells primarily standard products in
16 the United States. Standard products by definition
17 compete with all other standard products from domestic
18 and subject import producers."

19 Having read that, in my opinion it follows
20 that subject products from Mexico are able to compete
21 with domestic product for all the U.S. customers
22 identified in your pre-hearing brief at pages 8 to 14.
23 Do you agree?

24 MR. NESSEL: Volker Nessel speaking. May I
25 take the question instead because my English is a

1 little bit better.

2 CHAIRMAN KOPLAN: I've been able to
3 understand Mr. Piotti very well when he was speaking
4 earlier. I mean, I'm happy -- but when he gave his
5 direct testimony I had no problem understanding him.
6 It is his testimony that I'm referring to. That was
7 him testifying, not you, at the staff conference on
8 that.

9 MR. PIOTTI: Okay. We are selling in United
10 States standard products with a small difference. For
11 example, I don't know, we are selling to S&G Resources
12 our F-1200. Our standard viscosity of this product is
13 1000 to 3000 CPS at 1 percent, but the customer asked
14 for a viscosity between 2500 through 3000.
15 Consequently, a small niche of market. But, yes, we
16 are selling CMC with high purity with a normal degree
17 of substitution but with small differences in the
18 specification.

19 CHAIRMAN KOPLAN: Well, if they're small
20 differences, then you can be competing with each
21 other, can't you, as they're saying? With the
22 products that you're listing in your brief. I'm
23 looking at the ones that you've identified in your
24 brief.

25 MR. NEELEY: Chairman Koplan, if I could try

1 to address that, based on what we've said in our
2 brief?

3 Our position --

4 CHAIRMAN KOPLAN: I'm sorry. What I'm
5 looking at is what he said at the staff conference.

6 MR. NEELEY: I understand and I think the
7 two can be reconciled, if I can be permitted to say.

8 CHAIRMAN KOPLAN: I'd like to see you do
9 that, yes.

10 MR. NEELEY: Okay. Well, we've never taken
11 the position that our products are that different. In
12 other words, the specifications of the products are
13 not radically different from the U.S. products.

14 CHAIRMAN KOPLAN: Okay.

15 MR. NEELEY: And that's what he said in the
16 preliminary conference and we agree with that. What
17 we're saying is something a bit different which is
18 that for logistical reasons and for availability
19 reasons and for in some cases qualification reasons,
20 those are non-price reasons for which we're able to
21 sell in the United States, so in that sense we're not
22 competing based on price in the United States. That's
23 what we're saying.

24 We're not saying that there's a radical
25 difference in the products themselves, which is I

1 think what he's said now again.

2 CHAIRMAN KOPLAN: Okay. If you could expand
3 on that in your post-hearing, I would appreciate it.

4 MR. NEELEY: Sure.

5 CHAIRMAN KOPLAN: I would also appreciate
6 having the petitioners address this as well again,
7 having listened to the answer and for purposes of the
8 post-hearing.

9 MR. LEBOW: We will do that.

10 CHAIRMAN KOPLAN: Thank you. Thank you,
11 Mr. Lebow. I needed to identify who just responded
12 for the record.

13 Mr. Huizinga or Mr. McKenzie, in your
14 pre-hearing brief at page 20, Noviant argues that
15 according to questionnaire responses, and I quote,
16 "Purified CMC is not an isolated product in a
17 distinctly defined marketplace, rather, it is one
18 member in a hydrocolloid family that numbers more than
19 two dozen products that can substitute for each other
20 in the various applications that call for thickening,
21 gelling, film coating or other rheology functions."

22 However, in its pre-hearing brief Aqualon
23 argues (a) that Huber Corporation, Noviant's parent
24 corporation, has previously taken the position that
25 substitution between purified CMC and other

1 hydrocolloids is very low. That's at page 50 and
2 Exhibit 6. And (b) that IMR, the source of the price
3 series used by Noviant to argue the price competition
4 with these other products had led to price declines
5 for purified CMC has in fact found only limited
6 substitution between purified CMC and these other
7 products.

8 I'm wondering which of your differing
9 arguments on substitutability is correct here.

10 Mr. McKenzie, do you want to start?

11 MR. CLARK: Mr. McKenzie will finish.

12 I just wanted to make one comment which relates to
13 Exhibit 6 to Aqualon's brief, the statements that were
14 attributed to the competition proceeding in the U.K.

15 CHAIRMAN KOPLAN: Sure.

16 MR. CLARK: If you look at the statements
17 that were made there in connection with -- and this
18 relates the acquisition of C.P. Calco, the discussion
19 relates to two or just three specific hydrocolloids.
20 We make reference in the brief to, I believe, it's a
21 total of 29 or 31. So we're talking about a much
22 larger universe. What was being discussed in that
23 particular instance was, I believe, limited to in
24 particular xanthin, to pectin and there was one other.

25 You do not see, for example, in that

1 presentation discussions of things like some of the
2 many hydrocolloids that Ken will then speak to in the
3 exhibit to his testimony where we are now talking
4 about HEC, MC, derivatives, polyvinyl alcohol, guar,
5 starch, carboxymethyl starch. So what you have in
6 that statement that was made in conjunction with the
7 particular circumstance of a competition proceeding in
8 the United Kingdom was not even a full handful of
9 examples. The world of hydrocolloids and water
10 soluble polymers is much larger than just that.

11 But Mr. McKenzie is the expert.

12 CHAIRMAN KOPLAN: Well, for a non-expert,
13 you seemed to cover a fair amount of ground.

14 Go ahead, Mr. McKenzie. Is there anything
15 left?

16 MR. MCKENZIE: He did a very good job. As
17 Mr. Clark says, we live in a world of water soluble
18 polymers, not only the handful of hydrocolloids, and
19 it also depends on which particular application
20 segment the substitutability would arise.

21 I think you may have copies of this with
22 you.

23 CHAIRMAN KOPLAN: I do. That's today's
24 exhibit.

25 MR. MCKENZIE: Yes.

1 CHAIRMAN KOPLAN: Yes.

2 MR. MCKENZIE: In 2001, basically, this same
3 handful of key competing water soluble polymers are in
4 the same graph, but when we go from the left to the
5 right, going up in the price patterns, CMC is roughly
6 in the middle, if you look at the 2004 CMC is still in
7 the middle, but the pattern has changed and also the
8 price bands have narrowed. And, as I indicated
9 earlier in my direct testimony, depending on
10 applications and depending on the relative price
11 ratios between competing water soluble polymers and
12 their particular functionalities, substitutability can
13 be more readily obtained.

14 In the case of paper, it becomes the price
15 of polyvinyl alcohol or the price of starch will have
16 a fairly fast substitutability impact on CMC.

17 In the case of food, CMC can be substituted
18 relatively readily by guar gum. So, again, if the
19 price differential narrows, it's much more easy to
20 substitute a CMC or other water soluble polymer or
21 hydrocolloid for CMC. And in the case of food, we
22 will look in more detail to try to get you specific
23 price change ratios that would impact a move.

24 CHAIRMAN KOPLAN: I appreciate that.

25 MR. MCKENZIE: Does that answer your

1 question?

2 CHAIRMAN KOPLAN: Yes, it does. And if you
3 could do that for me for the post-hearing, I would
4 appreciate that. Thank you very much.

5 MR. HUIZINGA: If I may add something to
6 that? These kind of analyses is something which is
7 more like a regular practice in our, to track these
8 kind of price trends. Of course, in a new combination
9 with C.P. Calco where more hydrocolloids will be
10 added, possibly we will have more accurate
11 information, but it's more like in-house information.
12 And definitely also of course it will be used to
13 follow these kind of sensitivities of substitution
14 between the elements.

15 CHAIRMAN KOPLAN: Thank you.

16 Commissioner Hillman?

17 Oh, I'm sorry. Commissioner Miller. It's
18 you.

19 COMMISSIONER MILLER: I'm back.

20 CHAIRMAN KOPLAN: You're back.

21 COMMISSIONER MILLER: My apologies for
22 having to step out unexpectedly. If I ask a question
23 that you have already been asked or answered, I do
24 apologize.

25 Let me start by inviting you, Mr. McKenzie,

1 you offered to expand a bit on your perspective on the
2 Proctor & Gamble history, so why don't I give you that
3 opportunity, if no one else has yet.

4 MR. MCKENZIE: Yes. In Proctor & Gamble,
5 our relationship started with Proctor in the mid '90s
6 when they invited Noviant as it was then Mezza Settler
7 to come and talk to them about their strategic
8 direction for CMC purchases. It's a key ingredient in
9 many of the Proctor formulations, in laundry
10 detergent, dental adhesives, toothpaste, paper towels.
11 And they needed to decide which direction they needed
12 to go for the next ten years, so we were one of the
13 key companies invited in.

14 Over the coming few years, we developed some
15 products with them for oral care. We developed a
16 patented technology with them for laundry detergents
17 and we had a very good reputation within Proctor, so
18 when it came to looking at expanding our role in
19 Proctor, particularly in light of the upcoming reverse
20 auction, we were also invited to go and talk with some
21 of the other application areas, particularly in paper
22 towel and in Sunny Delight.

23 So they had indicated they had a very strong
24 interest in Noviant having a share of their towel
25 business and that they would like to see how that

1 happened in the reserve auction. And both
2 Mr. Huizinga and I amongst others, we were in the
3 reverse auction, which was incredibly boring, sitting
4 in front of a computer screen and nothing was
5 happening. But we had already made a strategy
6 decision where we would go in terms of a price bid and
7 we only made one price bid and that was our first bid.
8 We did not change our bid at all, regardless of when
9 the other bids came in.

10 And we were pretty unhappy when someone at
11 the end of the first session put another bid in
12 because that automatically triggers another 15 minutes
13 where nothing again happened and this happened once
14 more, so we basically sat there for 30 minutes looking
15 at computer screens.

16 But we were not the low price bidder and we
17 only received a part of the initial award of business
18 for the paper towel business for Proctor & Gamble in
19 North America.

20 COMMISSIONER MILLER: When you're doing
21 these reverse auctions, do you know -- are the bidders
22 identified?

23 MR. MCKENZIE: No. There's nothing up there
24 at all. All you get is what the last price was.

25 COMMISSIONER MILLER: But everybody who is

1 bidding, only those who are qualified for the business
2 are --

3 MR. MCKENZIE: No. The other point is that
4 we were not qualified. The people who they invited
5 were not necessarily qualified in the application
6 area. We were not qualified for the supply and
7 production of the paper towel for Proctor.
8 Qualification happened in the six months or nine
9 months after we were awarded that piece of the
10 business. So they invited people to bid and then they
11 would determine who based on a number of factors,
12 price was only one of them, technology capabilities,
13 support, supply capability, were all factored into the
14 award decision so we were not the low price bidder and
15 we didn't get all of the business.

16 COMMISSIONER MILLER: Was there only one?
17 I had the impression from the testimony this morning
18 that there was more than one of these reverse
19 auctions, or at least it covered more than one product
20 area, maybe that's it.

21 MR. HUIZINGA: It covered two areas.
22 I think at that time, the auction was split in two
23 parts. One part was the European business and the
24 other part was their U.S. business. And on that
25 actually then also, if I'm correct, if I remember

1 correctly, on that part and then also the e-auction
2 was held. I don't know exactly -- as far as I can
3 remember, they didn't disclose who participated, but
4 there were multiple participants unanimously. Also,
5 when the price changes happened, it would not indicate
6 who would have done that, what would be the origin of
7 the new price coming in.

8 MR. MCKENZIE: All we can say is there were
9 at least two people on there because we were there and
10 somebody else was changing the price, so we know there
11 were two. There could have been three, there may have
12 been five, we don't know.

13 COMMISSIONER MILLER: I'm trying to sort of
14 understand what I heard this morning and understand
15 what I'm hearing from you and finding the common
16 ground or whatever. Some of it doesn't make sense to
17 me. I mean, the idea that multiple not qualified
18 suppliers -- I mean, if the bids are being made by
19 suppliers that are not qualified, is it just the
20 assumption that once the bidding is finished the
21 companies will definitely be able to qualify? I mean,
22 that part just doesn't make much sense to me. Is that
23 the way it's done in the business?

24 MR. HUIZINGA: In that sense, I think and
25 also probably the people from Proctor & Gamble are the

1 right ones to ask.

2 COMMISSIONER MILLER: Sure.

3 MR. HUIZINGA: I can understand your
4 confusion and the process itself also was, I think,
5 probably also for our colleagues of Aqualon and
6 ourselves pretty new. It was kind of a hype at that
7 time that these things were coming up, but very few
8 actually really came into practice as such and this
9 was actually one of them.

10 COMMISSIONER MILLER: Okay.

11 MR. HUIZINGA: But that's at least from how
12 we participated, how it ended, how it happened.

13 COMMISSIONER MILLER: Okay. I'd like to
14 invite you to elaborate on your relationship with them
15 subsequent. They haven't done these again. You're
16 welcome to do so in your post-hearing brief.

17 MR. MCKENZIE: They have not done another
18 reverse auction.

19 COMMISSIONER MILLER: So any further
20 dealings have just been of the more traditional
21 contract negotiation nature.

22 MR. MCKENZIE: Real people. Yes.

23 COMMISSIONER MILLER: Okay. Okay.

24 Again, someone may have already asked you to
25 elaborate a little bit more on your efforts. As I

1 heard your initial testimony and you talked about your
2 efforts to raise prices, first in 2003, as I recall?
3 And then again in 2004, I think I recall that you
4 said, Mr. Huizinga, was it you who said in 2004 your
5 effort was to raise prices globally?

6 MR. HUIZINGA: Yes. That's correct.

7 COMMISSIONER MILLER: Was that the case in
8 2003 or was that more of just a U.S. price effort?

9 MR. HUIZINGA: I would say not executed on a
10 global basis, but say more in the U.S. and partly in
11 Europe.

12 COMMISSIONER MILLER: Okay. To the extent
13 you could either talk about it more here or document
14 in your post-hearing submission what transpired, your
15 efforts to raise prices, what happened. I guess
16 I take from your earlier testimony you attributed your
17 inability to being able to raise prices to your
18 competition with Aqualon or just the general
19 resistance of the market or -- do you want to
20 elaborate here, if you might, or in a post-hearing
21 submission if it's sensitive?

22 How for Noviant do you try to raise prices?
23 Is it just a letter that goes out across the board?

24 MR. HUIZINGA: At different times, we have
25 done a price announcement in, I believe, the CMR,

1 Chemical Marketing Reporter announcing the price
2 increase. And after that, since it was in Q1 or Q2 of
3 course, so you can only do it there where contracts
4 are permitting it. If you have running contracts,
5 obviously you can, of course, only when they open up.
6 So we have done that. And several contracts at that
7 time also, for example, came out where we pushed the
8 price increase through and we immediately saw there
9 the negative impact of losing business.

10 COMMISSIONER MILLER: Okay. When you said
11 2003, what was the timeframe?

12 MR. HUIZINGA: Q2. It was --

13 COMMISSIONER MILLER: Second quarter?

14 MR. HUIZINGA: I think it was something like
15 March or April, is my memory.

16 COMMISSIONER MILLER: And March or April of
17 '03. And to the extent you have annual contracts, I'm
18 trying to remember if it was your discussion or the
19 discussion of Aqualon when there was talk about
20 contracts are typically renegotiated in the fall. Is
21 that true for Noviant as well?

22 MR. HUIZINGA: Yes, I think overall it's
23 fall, November, December. Some are in Q1. Of course,
24 actually, there is a split, but I would say the
25 majority of course is more like at the end of the

1 year. That's correct.

2 COMMISSIONER MILLER: So if you were trying
3 to push through a price increase in March or April of
4 '03, was that for existing contracts that were already
5 in place or business that was not long-term contracts?

6 MR. HUIZINGA: Specifically, then also for
7 businesses which were either coming up for renewal of
8 the contract or where you have open business.

9 COMMISSIONER MILLER: Okay.

10 MR. HUIZINGA: So just open agreements in
11 that sense.

12 COMMISSIONER MILLER: Right. Right.

13 MR. HUIZINGA: As Mr. Goss I think also
14 described it. There is a price agreement in place on
15 which we supply the products, there's not really like
16 a timeframe attached to that or a volume attached to
17 that.

18 COMMISSIONER MILLER: Okay.

19 MR. HUIZINGA: It all happens depending on
20 how you agree upon it with the customer.

21 COMMISSIONER MILLER: Okay. I appreciate
22 your answers. Thank you.

23 MR. HUIZINGA: Do you still want me to come
24 back on the price increase or will this do?

25 COMMISSIONER MILLER: Well, I think to the

1 extent that you can provide the commission specific
2 information documenting what happened or whatever,
3 it's useful. Thank you.

4 MR. HUIZINGA: In the post-hearing brief, we
5 will document that.

6 COMMISSIONER MILLER: Yes. In the
7 post-hearing submission.

8 CHAIRMAN KOPLAN: Thank you.

9 Commissioner Hillman?

10 COMMISSIONER HILLMAN: Thank you. Just
11 following on a little bit more on this price issue,
12 just so I understand it, because I'm trying to square
13 this issue of different prices -- again, if I look at
14 the data that we've collected, we've collected a lot
15 of pricing data on products that are sold into
16 different market segments, and they obviously reflect
17 different prices, so I'm trying to understand, again,
18 if it's the same grade of product and one time you're
19 selling it into the paper industry and one time you're
20 selling it into a different sector, will it
21 nonetheless be priced the same if it's the same grade
22 of product?

23 MR. HUIZINGA: The dynamics, for example,
24 for pricing are, I would say, depending on the
25 application of the products and that ties in then

1 also, for example, with the discussion which we had
2 earlier about substitutions and so on so the
3 application has different drivers and then I would
4 also say that the drivers are different. So that is a
5 part of that.

6 On the other hand, also, yes, per
7 application, different pricing.

8 COMMISSIONER HILLMAN: Okay. So the prices
9 would be different depending on the application.

10 I'm just trying to understand that versus
11 this issue of an across-the-board price increase. So
12 it isn't like you just have a list price for each
13 grade and then you announce a 15 percent price
14 increase and that's the way it would come down in the
15 market, it's just an across the board percentage price
16 increase. How did this work? It was the
17 same percentage for every grade and in every sector or
18 was it kind of a different level of price increase,
19 either by sector or by grade?

20 MR. HUIZINGA: I would say it was before my
21 time, so I don't have the full details as to how we
22 did it at that time in the U.S. At that time, where
23 we had opportunities, it was more like a selective
24 targeted approach to that, and depending by
25 application, depending on, say, the price which we

1 already had, there could be a variation in price
2 increase.

3 COMMISSIONER HILLMAN: Okay. So in 2003,
4 they were more negotiated, you were trying to get a
5 certain percentage price increase, but it came down --
6 it was translated into the market in individual
7 negotiations in each sector or with each customer or
8 for each grade?

9 MR. HUIZINGA: To the best of my belief,
10 yes.

11 COMMISSIONER HILLMAN: Okay. Okay.

12 Mr. Goss, if I can come back to you on this
13 issue of do the prices in one market segment at all
14 translate into prices in the other? We heard this
15 morning some testimony that there's a limited number
16 risk of forfeiture purchasers who purchase in various
17 segments and therefore would actually have an ability
18 to know what the prices are. Do you typically have
19 any idea what the price for CMC would be in the food
20 segment market or the oral hygiene market or any of
21 these others?

22 MR. GOSS: The answer is no. We really
23 don't track the other markets. We can compare CMC,
24 what its functionality is, with some other raw
25 materials if we wanted to mix and match, but we don't

1 go outside of our market or our industry.

2 COMMISSIONER HILLMAN: Okay. That's what I
3 would have guessed. I'm just trying to understand,
4 again, this idea of an across the board price increase
5 versus this issue that these markets pricewise are
6 somewhat segmented from one another.

7 Maybe then if I can come back to you or to
8 you, Mr. McKenzie, to help me understand why generally
9 we see prices in the oil field sector significantly
10 below those in other sectors. Why do you think that's
11 the case?

12 MR. HUIZINGA: The oil drilling sector, I
13 think Mr. Somers can confirm that, is a sector also --
14 first of all, I think it's a global market. It's the
15 way -- think we all discussed contracts, or volumes
16 or agreements, more have to deal with doing business
17 on a global basis than say specifically either here in
18 the U.S. or in another region. On the other hand, the
19 oil drilling industry consists mainly of, I would say,
20 three to four companies who have within the oil
21 drilling industry probably purchased 90 percent,
22 80 percent, I'm sorry, someone else may be more the
23 right person to answer that, but I would say the
24 majority share of the CMC order pack, as they call it,
25 oil drilling applications. There's an enormous, in

1 that sense, buying power from their end.

2 COMMISSIONER HILLMAN: Okay. Mr. Somers, do
3 you have a view on that?

4 MR. SOMERS: Yes. Our industry, at least in
5 Halliburton or Baroid, we buy a product that we market
6 under our own trade name. We've developed a market.
7 We are able to control the market, not only somewhat
8 the pricing, but we control the quality and the
9 service of that market and we're able to leverage our
10 total purchases worldwide.

11 Our major competitors have done the same, so
12 we're not selling a commodity, we're selling a Baroid
13 trade name product. If you want to sell that, you
14 have to sell that through us, so we're able to
15 leverage that purchase and that's why we're able to
16 drive those prices down.

17 Also, we offer attractive volumes and
18 usually can predict those volumes around the world.
19 And, in some cases, we'll even take take-or-pay
20 contracts, so if you want to maintain a production
21 level in a plant, it's very advantageous to get one of
22 these oil field contracts.

23 COMMISSIONER HILLMAN: Okay. And we heard
24 testimony this morning, perhaps maybe Mr. McKenzie,
25 you might know this, that from domestic industry's

1 perspective the nature of the product used in the oil
2 field sector is slightly more costly to produce, given
3 its viscosity and on the other hand offset by the
4 higher volume, longer runs of the same product. What
5 would be your take on that?

6 MR. MCKENZIE: I can't comment on the cost
7 of production of the oil grades, because we make quite
8 a variety of them and we make them from very different
9 cellular sources, so our production operations are
10 really not comparable with Aqualon. I don't know that
11 the oil grades would be significantly more to produce
12 for Noviant than other grades, but it's certainly
13 something we can address the cost of production in
14 post-hearing documentation.

15 COMMISSIONER HILLMAN: No, I would just be
16 curious, again, how much variance there is across the
17 various grades in terms of cost of production and how
18 that affects prices.

19 Mr. Somers, perhaps if I could come back to
20 you, you were in the market in 2003 when Mr. Huizinga
21 was trying to get this price increase through. How
22 did you see it? How did it come to you as a potential
23 price increase in this March, April 2003 timeframe?

24 MR. SOMERS: It was not accepted readily.
25 We were under quite a bit of price pressure from the

1 major oil companies who had gone to leveraging their
2 total purchases worldwide and we were having an
3 extremely hard time competing, so --

4 COMMISSIONER HILLMAN: Did you get a letter
5 or notice, something saying --

6 MR. SOMERS: Usually they'll send a notice
7 that they anticipate an increase and then they'll come
8 in, if we're not under contract and try to raise the
9 price or say on the next contract period we're going
10 to have a price increase.

11 COMMISSIONER HILLMAN: This is what I was
12 trying to understand. Presumably, you're a big
13 customer of theirs. Do you have a contract?

14 MR. SOMERS: Yes. We normally have a
15 price -- we have a contract and in that contract it
16 will have terms of pricing, usually it's firm for a
17 year. In a very strong market it may have 90 days
18 notice or six months notice. It varies.

19 COMMISSIONER HILLMAN: Do you know when this
20 potential price increase came about in 2003?

21 MR. SOMERS: I think we had firm pricing for
22 a given period at that time.

23 COMMISSIONER HILLMAN: So it was basically
24 suggesting that at your next contract negotiation
25 there would be an increase.

1 MR. SOMERS: That's correct.

2 COMMISSIONER HILLMAN: Okay. There was not
3 a suggestion that in March of 2003 the price itself
4 would go up.

5 MR. SOMERS: If I remember correctly, the
6 price increase would not take effect until the
7 contract date was met.

8 COMMISSIONER HILLMAN: Okay. And, again,
9 it's an across the board percentage increase or is it
10 different for different grades? You're buying a lot
11 of grades, you say. Is it the same increase no matter
12 what the grade or volume?

13 MR. SOMERS: The contract usually will
14 denote what grade, what product, and it will be by
15 product. I can't say that -- we weren't buying all
16 the products from Noviant so I'm not sure that it
17 affected all the products.

18 COMMISSIONER HILLMAN: But basically you get
19 this notice and then you call them up and you say no
20 way, I'm not going to pay it? Or you then start
21 looking for other sources? I mean, what's your
22 response when you get this?

23 MR. SOMERS: We normally maintain multiple
24 sources and usually have different closing dates on
25 the contracts. With a customer our size, they don't

1 send just a notice.

2 COMMISSIONER HILLMAN: That's what I
3 figured, but --

4 MR. SOMERS: Normally, somebody very high up
5 in the company comes in with hat in hand and says it's
6 time, we have to have some relief, at which time we'll
7 say, well, maybe we can or maybe we can't, but in that
8 time period, the service companies were under
9 tremendous pressure by the major oil companies who
10 were doing a fantastic job of leveraging their
11 purchases worldwide.

12 COMMISSIONER HILLMAN: Okay. Okay.

13 MR. SOMERS: So these price increases
14 weren't readily accepted.

15 COMMISSIONER HILLMAN: But do you start,
16 then, looking at whether you can get a better deal
17 from Aqualon or somebody else?

18 MR. SOMERS: If it's a bid period, yes,
19 we'll re-bid it. What we may do if we have existing
20 contracts with another supplier, we may try to roll
21 those over at the existing price in lieu of bids.

22 COMMISSIONER HILLMAN: Okay. All right.
23 That's very helpful. Thank you.

24 CHAIRMAN KOPLAN: Thank you.

25 Commissioner Lane?

1 COMMISSIONER LANE: Mr. Somers, let's stay
2 with you for a minute. Your responses to Commissioner
3 Hillman sort of put things in perspective for me, so
4 now maybe I can get back on my train of thought that
5 I probably didn't ask you correctly before.

6 Okay. So Noviant comes in and wants to
7 raise the prices and they send probably the president
8 with his hat in hand to you and you say this isn't
9 going to work.

10 Now, does Aqualon then come and say we will
11 offer you all of your needs for a price lower than
12 Noviant?

13 MR. SOMERS: Normally, it depends on our
14 contract periods, but in the case of Aqualon, yes,
15 they came in and offered lower prices in that period.

16 COMMISSIONER LANE: And maybe I'm getting
17 into business proprietary information, did Halliburton
18 then decide to deal with Aqualon and that was at a
19 lower price than what Noviant was offering?

20 MR. SOMERS: Halliburton decided to deal
21 part of its requirements through Aqualon. Yes. But
22 not all. And only in the U.S.

23 COMMISSIONER LANE: Okay. Was it a
24 substantial portion of your needs in the U.S.?

25 MR. SOMERS: I think at that time we started

1 buying a substantial portion from Aqualon.

2 COMMISSIONER LANE: Am I correct in assuming
3 from what Mr. McKenzie said that it was lower priced
4 than what Noviant was asking?

5 MR. SOMERS: To my recollection, it was.

6 COMMISSIONER LANE: And at that particular
7 time, when you decided to go with Aqualon, you hadn't
8 been buying a whole lot of product from Aqualon at
9 that time?

10 MR. SOMERS: We may have started buying a
11 little just before that period and we just shifted the
12 major purchases to Aqualon.

13 COMMISSIONER LANE: And so you still wanted
14 to have more than one supplier?

15 MR. SOMERS: That's correct.

16 COMMISSIONER LANE: Okay. Thank you.

17 Now, the next question I have is for
18 Mr. McKenzie or Mr. Malashevich.

19 On page 41 of your pre-hearing brief, you
20 compare an operating margin to U.S. Treasury bond
21 rates. Wouldn't it be more appropriate to compare an
22 alternate investment such as U.S. Treasury bond rates
23 to return on investment, rather than to the operating
24 margin?

25 MR. MALASHEVICH: I'm probably in a better

1 position to respond to that.

2 COMMISSIONER LANE: And that's
3 Mr. Malashevich.

4 MR. MALASHEVICH: Yes. Forgive me,
5 Commissioner. I'm so concentrated your questions,
6 I frequently forget to introduce myself.

7 COMMISSIONER LANE: And I'm concerned that
8 the transcript be correct.

9 MR. MALASHEVICH: Your concern is proper.
10 Yes. In case you missed it, I'm Bruce Malashevich.
11 That comparison was done only because Petitioner had
12 selected that as a point of comparison earlier in the
13 case, not because I or I believe anyone on the team
14 thinks that that is necessarily an appropriate
15 benchmark.

16 COMMISSIONER LANE: Okay. Let me stay with
17 you for a minute. On pages 40 and 41 of your brief,
18 you explained how you recalculated Aqualon's financial
19 data. Have you recalculated Aqualon's return on
20 assets based on your assumptions?

21 MR. MALASHEVICH: Not at this time, no.

22 COMMISSIONER LANE: Well, could you please
23 provide that calculation in a post-hearing submission?

24 MR. MALASHEVICH: I'll be happy to do so and
25 actually based on the information learned today there

1 are further refinements we can do that calculation.

2 COMMISSIONER LANE: Okay. Thank you.

3 Mr. Chairman, I don't have any other
4 questions.

5 CHAIRMAN KOPLAN: Thank you, Commissioner.
6 Commissioner Pearson?

7 COMMISSIONER PEARSON: Thank you,
8 Mr. Chairman.

9 The issue of the price increases in March,
10 April 2003 and then the other one in the last quarter
11 of 2004, they've been discussed and, as I was trying
12 to sort out in my mind what had been said, I realize
13 that I wasn't entirely clear yet, so for my benefit,
14 the March, April 2003 price increase, was that
15 worldwide or was that just here in the United States?

16 This is Mr. Huizinga.

17 MR. HUIZINGA: My name is Dick Huizinga. It
18 was done in the U.S. and also in Europe because those
19 were the main areas for the price increase.

20 COMMISSIONER PEARSON: In the United States
21 and Europe where the price increase was implemented.

22 MR. HUIZINGA: Yes.

23 COMMISSIONER PEARSON: And then was it
24 necessary to roll back that price increase in Europe
25 as well as in the United States? Or did the price

1 increase hold in Europe?

2 MR. HUIZINGA: I would say there that the
3 market structure in Europe I would say is slightly
4 different than the market structure in the U.S.A. The
5 market structure in the U.S.A. here is you have still
6 overall companies buying larger volumes of CMC while,
7 for example, in Europe the market is much more
8 fragmented and therefore also a larger portion of the
9 business is being done, say, over distributors and
10 retailers and such.

11 Also, in Europe, we have done the price
12 increase specifically directed to distributors,
13 certain parts, that went through in certain parts in
14 that sense so we have some push back in that sense,
15 but I would say it was not as clear or such a big
16 issue as, for example, what we saw on the American
17 market because it is much more clearer, it is much
18 more -- when you lose a contract, you lose immediately
19 a significant volume.

20 COMMISSIONER PEARSON: Well, was Aqualon's
21 pricing from its factory in France then less
22 aggressive in terms of its European sales than you
23 were seeing at that same time with Aqualon in the
24 United States?

25 MR. HUIZINGA: Yes. Less aggressive. At

1 least we noticed less issues in that sense.

2 COMMISSIONER PEARSON: Okay. Then the
3 September 2004 price increase, was that just in the
4 United States or was that also --

5 MR. HUIZINGA: No, it was global.

6 COMMISSIONER PEARSON: That was global?

7 MR. HUIZINGA: That was globally executed.

8 COMMISSIONER PEARSON: Okay. And you
9 indicated that that price held in the United States
10 because not long afterwards Aqualon also instituted a
11 price increase.

12 MR. HUIZINGA: We came out with also with a
13 press publication of the price increase in September,
14 end of September, I don't know exactly the date of
15 that. If I recall correctly, within a few weeks after
16 that, Aqualon came with their announcement as well,
17 that they were increasing their prices.

18 COMMISSIONER PEARSON: Okay. And did that
19 September 2004 price increase also hold in other
20 countries outside the United States or was it rolled
21 back in some of those areas?

22 MR. HUIZINGA: I wish I could experience a
23 price increase which would hold some time, somewhere,
24 for a full 100 percent, but I think overall in here it
25 was successful and it helped. Yes.

1 COMMISSIONER PEARSON: Okay. But it would
2 be correct, then, since that's the most recent price
3 increase that we've discussed today, I believe, does
4 the market have a firmer tone now than it did a year
5 ago?

6 MR. HUIZINGA: Can you rephrase that
7 question?

8 COMMISSIONER PEARSON: Well, I'm just
9 wondering, compared to one year ago, prior to the
10 introduction of the September 2004 price increase,
11 does the market now have a firmer tone? I mean, it's
12 accepted that price increase and that increase still
13 seems to be holding? Or are you dealing with
14 pressures that are pushing the price down again?

15 MR. HUIZINGA: Well, the problem in that
16 sense, of course, after the exercise you come into
17 normal practice and you will have some more influences
18 in there, but overall I would say, yes, it's still
19 pretty much holding, although you have different
20 applications, again, different drivers which can put
21 pressure on that.

22 COMMISSIONER PEARSON: Right.

23 MR. HUIZINGA: But overall, I think the
24 industry acknowledged that there is a need for price
25 increases, specifically also for -- as you can see,

1 for example, energy costs and raw material costs are
2 going up, so in that sense also that has been more
3 profound and probably also therefore more supported by
4 the market.

5 COMMISSIONER PEARSON: Okay. Great.

6 Mr. Malashevich?

7 MR. MALASHEVICH: Yes. Bruce Malashevich,
8 for the record. Commissioner Pearson, one addition to
9 that, it's not a phenomenon that was confined to CMC.
10 We just in the last couple of days received new
11 tracking report from the consulting organization IMR
12 that covers the first quarter of 2005. And it shows
13 considerable upward movement in hydrocolloid prices
14 generally, commencing in the closing months of 2004,
15 but moving more sharply upward in the first quarter of
16 2005. So there is a certain amount of confluence of
17 price movements with the major substitutes, both on
18 the downside and the upside of the price changes.

19 COMMISSIONER PEARSON: Okay. Thank you.

20 Looking specifically at the oil field
21 sector, what are the demand prospects there for the
22 foreseeable future?

23 MR. HUIZINGA: I think in that sense a an
24 energy shortage, a shortage of oil foreseen already
25 now and in the near future, the drilling activities

1 will remain in that sense on a high level. However,
2 again, we review the oil drilling industry as a global
3 market and not as a U.S. market or as a regional
4 market. For us, it's a global market. It might very
5 well be, Mr. Somers can provide more detail in that
6 that says the demand of these rates might shift by
7 region as the drilling activities in other regions
8 will increase and then certain other regions will
9 decrease because of an area that's already fully
10 exploited, for example.

11 COMMISSIONER PEARSON: Mr. Somers?

12 MR. SOMERS: Halliburton experienced a big
13 uptick in demand starting the last quarter of 2004.
14 I think they are projecting that to continue, both
15 domestically, especially internationally in places
16 like West Africa. So right now, they're very bullish
17 for the next few years.

18 COMMISSIONER PEARSON: That doesn't surprise
19 me particularly. I mean, with crude oil above \$50 a
20 barrel, I would think there would be a lot of people a
21 lot of places in the world that would be trying to put
22 holes in the ground.

23 MR. SOMERS: Actually, the price per barrel
24 can be much lower and still be very, very attractive
25 for drilling worldwide. So the current price is way

1 more than is needed to attract drilling activity.

2 COMMISSIONER PEARSON: Mr. Huizinga?

3 MR. HUIZINGA: In that sense, you should
4 also know how much it costs to make a hole in the
5 ground, give some precautions in that sense from the
6 market.

7 COMMISSIONER PEARSON: Right. Well, I know
8 that drilling is expensive, but I would guess that the
9 mud isn't the most expensive item in the drilling
10 process. The price of the mud doesn't make or break
11 whether you run the drill rig, does it?

12 MR. SOMERS: Well, if you listen to the oil
13 companies, it does, but normally I think it's less
14 than 15 percent. And even less then on these large
15 offshore platforms. But the oil companies have had
16 the most success in reducing drilling fluid prices
17 over the last five years and had less success in
18 reducing costs of drill rigs and other areas. So, you
19 know, where you get the savings, that's where you get
20 most aggressive.

21 COMMISSIONER PEARSON: Okay. The last
22 question that I have deals with non-subject imports.
23 In your brief, you had argued that non-subject imports
24 had entered the U.S. market at lower prices and caused
25 domestic prices to fall. If this has occurred with

1 respect to lower priced third country imports, is it
2 also the case with subject imports?

3 Mr. Clark?

4 MR. CLARK: I'm not sure I understood the
5 question. We made the argument that non-subject
6 imports came into the United States at lower prices
7 based on the evidence on record.

8 COMMISSIONER PEARSON: That was what I was
9 interpreting from your brief, your pre-hearing brief.

10 MR. CLARK: And the consequence of that is,
11 as was alluded to earlier, you might expect there to
12 be market share increases. And the second part of
13 your question was subject imports --

14 COMMISSIONER PEARSON: Right. Subject
15 imports -- some of the subject imports have been sold
16 in the United States at less than domestic prices also
17 and so should we look at -- how should we interpret
18 that? Because if you're willing to argue that the
19 non-subject imports may have driven down domestic
20 prices, how about the undersold subject imports?

21 MR. CLARK: Well, I think the difference is
22 the consequence that flows from the overall trend in
23 the market and the relative consumption level. We
24 made the argument when it comes to pricing that you
25 need to look beyond the surface of the information

1 that's been collected and down to the most competitive
2 situations that you can identify on the record.

3 When you look at the situation there, you
4 see a very different pattern than the one that appears
5 from the surface, but then when you step back and you
6 ask what's the consequence of what is not really much
7 of a pattern of underselling whatsoever, you see
8 precisely the consequence you would anticipate, which
9 is subject imports losing market share. You look at
10 the apparent pricing behavior of the non-subject
11 imports, not just the volumes that are coming into the
12 market but also the prevalence of price quotes and
13 their acceleration in the market, and you see a
14 phenomenon that you would also anticipate, which is
15 the non-subject imports increasing their market share.

16 COMMISSIONER PEARSON: Okay.

17 MR. MALASHEVICH: If I may add one further
18 point. Basically, Mr. Clark has said what I would say
19 anyway, but there's one further point. Earlier in the
20 morning we had testimony from, I believe, Mr. Herak to
21 the point that his business unit did not import or
22 sell a single pound of the Chinese produced material
23 in the United States. I am sure that was a truthful
24 statement for his business entity, but I'm reading
25 from the 10-K of Hercules for the year 2003 which

1 says, and I quote, they talk about plant, 6000 metric
2 tons with room for expansion, Quantum's leading key
3 markets include food, toothpaste, ceramics and paper,
4 with annual sales of about 10 million. And in the
5 Chinese company's website, I'll quote here, "As a
6 subsidiary of Quantum High Tech," which is the entity
7 acquired by Hercules, they talk about how great their
8 CMC product is and they say, "Our products, enjoying a
9 good reputation among the users, not only sell well
10 across the country but also are exported to the United
11 States, Southeast Asia, the Middle East, Europe and
12 other countries and regions. The company has been
13 certified as a member of ISO 9002 and Star Kasher, the
14 international certifying system for food." And we
15 have accumulated other non-APO evidence from our
16 Internet searches, including Chinese language Internet
17 sites by this company that say CMC has clearly been
18 exported to the United States, but presumably by some
19 channel other than through Aqualon.

20 COMMISSIONER PEARSON: Okay. Thank you very
21 much.

22 I have no further questions.

23 Mr. Chairman, thank you for your temporary
24 color blindness.

25 CHAIRMAN KOPLAN: Oh, no, I don't have color

1 blindness. Thank you, Commissioner.

2 Let me come back, if I could as a follow-up
3 to Commissioner Lane's inquiry regarding Aqualon's
4 successful bid versus Noviant to get more of
5 Halliburton's business in that transaction that
6 Mr. Somers referred to. My request is this: it's for
7 Mr. Clark, Mr. Lebow and Mr. Somers. For purposes of
8 the post-hearing, I would like you all to provide, if
9 you would, the financial details of that bid
10 transaction that has been discussed, the timing, how
11 much was involved, quantity, price, respective price
12 bids. Can I get that from you all post-hearing? I
13 think I need all of you to agree for me to get both
14 sides.

15 MR. LEBOW: This is Ed Lebow. We'll get it
16 for you.

17 CHAIRMAN KOPLAN: Thank you.

18 Mr. Clark or Mr. Huizinga?

19 MR. HUIZINGA: We'll see what we have
20 available in that sense for documentation. Yes, sir.

21 CHAIRMAN KOPLAN: Good. And I see you are
22 nodding in the affirmative that you're going to
23 cooperate on that as well, Mr. Clark, right? Just for
24 the record.

25 MR. CLARK: For the record, we will provide

1 all the data that we have on that transaction.

2 CHAIRMAN KOPLAN: Thank you very much. I
3 appreciate that.

4 Mr. Huizinga and Mr. Clark, in its
5 pre-hearing brief at page 22, Noviant argues that, and
6 I quote, "In addition to other hydrocolloids, the
7 record in the final phase of these investigations
8 demonstrates that the price of purified CMC is also
9 influenced by the price of crude CMC and CMCFPS as
10 both products compete for sales in oil field
11 applications."

12 With your post-hearing submission, will you
13 submit price data for crude CMC similar to the pricing
14 series for other hydrocolloids corresponding to that
15 presented in Exhibit 6 of your pre-hearing brief?

16 You can say yes and look later.

17 MR. CLARK: I'm just pausing for a second to
18 look at Exhibit 6 to make sure that the series will
19 look the same, but we will be happy to provide
20 information on the pricing trends and the price
21 history for crude CMC or technical CMC as we prefer to
22 call it.

23 CHAIRMAN KOPLAN: Okay. When I looked at 6,
24 it looked like that kind of information would be
25 useful if you carried it over to this.

1 MR. CLARK: And in that episode, we will
2 also identify a number of the technical grade products
3 that are in fact now being used for what had
4 historically been purified applications.

5 CHAIRMAN KOPLAN: That would be great.
6 Thank you.

7 This is for Mr. Clark or Mr. Malashevich.
8 The average unit values for crude CMC presented in
9 Table C-2 of the confidential staff report do not show
10 the same pattern of price declines as the average unit
11 values of purified CMC presented in Table C-1 or the
12 sector-specific unit values for the oil field sector
13 presented in Table E-1.

14 If the price of crude CMC is influencing the
15 price of purified CMC, please explain why do they
16 reflect different trends.

17 Mr. Malashevich?

18 MR. MALASHEVICH: I made the same
19 observation you did, Mr. Chairman, but they are
20 average values and also the relevant market in the
21 United States is extremely small in relation to the
22 market for purified CMC. So a much finer level of
23 detail is going to be required along the lines you've
24 already requested, but I don't know -- I haven't been
25 privy to that data.

1 CHAIRMAN KOPLAN: Okay. Thank you.

2 Mr. Neeley, in the Amtex pre-hearing brief
3 at page 5, you argue that "About half of the market
4 for Mexican CMC sold in the U.S. is not available to
5 the U.S. industry because the largest customer of QAM
6 in the U.S., Azteca, has banned Aqualon products
7 because of quality problems."

8 On the basis of that, you argue that about
9 half of the Mexican market share is for products that
10 are deemed not fungible by a buyer.

11 Aside from your comparison of the domestic
12 1975 Ford Pinto to an imported 2005 Lamborghini, can
13 you cite any commission precedent for your argument?

14 MR. NEELEY: That if they're not qualified
15 that it makes it not competitive? I will take a look
16 at that.

17 CHAIRMAN KOPLAN: I would appreciate that.

18 MR. NEELEY: I'll be glad to.

19 CHAIRMAN KOPLAN: Thank you.

20 Mr. Taminen, I don't want to have you left
21 out. I've got a question I think you might be able to
22 help me with.

23 How different are the grades of CMC that are
24 sold in the non-regulated, that is, paperboard, oil
25 field or other uses, segments of the CMC market?

1 Are the same general products or categories
2 of product sold to oil field and other use customers?

3 MR. TAMINEN: I have to actually let maybe
4 Ken McKenzie to answer this one. I don't know the oil
5 field products at all.

6 CHAIRMAN KOPLAN: Okay. I'll shift to
7 Mr. McKenzie.

8 Do you want me to repeat the question,
9 Mr. McKenzie?

10 MR. MCKENZIE: Yes, please.

11 CHAIRMAN KOPLAN: I thought so.

12 MR. MCKENZIE: How different are the grades
13 of CMC that are sold in the non-regulated, that is,
14 paperboard, oil field, other uses segments of the CMC
15 market? I'll do it one at a time. First, if you
16 could answer that.

17 MR. MCKENZIE: For the record, this is Ken
18 McKenzie. This is the first time I've got it right so
19 far.

20 For the paper industry, they're very
21 different from the oil industry. They tend to be
22 lower in molecular weight, they have narrower ranges
23 in viscosity behavior because of the peculiar
24 application that the paper industry does. These are
25 made into a coating composition, coating pigments,

1 which form the body of the printing service, binders
2 and other additives and are coated at very high speed
3 under very high shear rates.

4 The oil industry is different and because of
5 the high saline conditions generally experienced in
6 the oil field, you have to do a different degree of
7 substitution pattern to protect the cellular backbone,
8 which can be very vulnerable under conditions of high
9 salinity, high temperature gradients.

10 CHAIRMAN KOPLAN: Okay. I appreciate that.
11 Are the same general products or categories of
12 products sold to oil field and other use customers?

13 MR. MCKENZIE: I'm sorry, could you repeat
14 that one?

15 CHAIRMAN KOPLAN: Are the same general
16 products, general products or categories of product,
17 sold to oil field and other use customers? I think
18 from what you're saying, your answer is probably no.

19 MR. MCKENZIE: No. Oil is a very specific
20 application and because of the variety of types of
21 well heads, whether it be land based, whether it be
22 ocean based, depending on the type, if it's a water
23 based mud or oil based mud or the depths of the well,
24 the temperature gradient, there are very specific
25 functionalities that you can't just generally use any

1 grade for.

2 CHAIRMAN KOPLAN: Is there any overlap in
3 the types of CMC sold in these markets, the ones that
4 we've just talked about? Not really?

5 MR. MCKENZIE: Not that we've seen.

6 CHAIRMAN KOPLAN: Okay. Thank you.

7 Mr. Malashevich, the Noviant pre-hearing
8 brief acknowledges on page 32 that the commission
9 found significant price underselling effects during
10 the preliminary phase of this investigation. You then
11 proceed to argue that the commission did not fully
12 consider the unusually broad pricing product
13 descriptions in this investigation and thus did not
14 place the proper context on the underselling analysis.
15 I'm quoting, "Although the underselling tables
16 presented by staff are arithmetically correct, they do
17 not represent a proper apples to apples comparison.
18 Thus, these comparisons should be given very little,
19 if any, weight in the commission's evaluation of price
20 underselling for several reasons."

21 I call your attention to footnote 19 on page
22 5-9 of the April 28 pre-hearing confidential staff
23 report regarding price data and what I'm about to read
24 is public and I'm quoting from that footnote: "The
25 product descriptions were based on questionnaire

1 comments submitted by the three responding firms:
2 Amtex, Aqualon and Noviant. In addition, the
3 commission staff followed up with these reporting
4 firms to reconcile any differences in product
5 descriptions reported by these firms. These six
6 products include the four products for which pricing
7 data were requested during the preliminary phase of
8 these investigations, plus one product suggested by
9 Aqualon, product 2, and one product suggested by
10 Noviant, product 5. Please note that except for
11 product 1, the product numbers shown here do not
12 correspond to the product numbers used during the
13 preliminary phase."

14 I note that in this final phase a clear
15 majority of price comparisons reflect underselling by
16 the subject imports. It is my understanding that
17 staff requested and got your input during each step of
18 this process. Am I wrong?

19 MR. MALASHEVICH: You are not wrong. As I
20 responded to Commissioner Lane's question earlier, we
21 tried to strike the balance, working with staff,
22 between achieving the closest possible comparison we
23 could while still trying to get a reasonably
24 representative share of the total market covered
25 without really knowing what the results would be.

1 When we got the results and examined them in
2 relation to the transaction specific data that is
3 summarized in Exhibit 9 of the pre-hearing brief and
4 also we do not, of course, at the preliminary phase
5 have the benefit of the purchasers' questionnaires
6 where as I mentioned in response to one of
7 Commissioner Lane's questions present in our view the
8 best possible source of a true apples to apples
9 comparison, controlling not only for product mix but
10 on purchasing size, the significance of a customer's
11 total volume. And if you compare the exhibit that we
12 prepared from the purchaser's questionnaire, what we
13 call purchaser specific questionnaire, to the
14 traditional analysis contained in the pre-hearing
15 report, you get a very different picture of who is
16 underselling whom by how much and when.

17 It's no criticism of staff or any party.
18 I think all parties contributed with sincerity in
19 trying to bring about the fairest possible
20 comparisons. At the end of the data, when all the
21 data were in, other comparisons I think are more
22 meaningful to the commission's analysis.

23 CHAIRMAN KOPLAN: Thank you. I appreciate
24 that.

25 Mr. Clark?

1 MR. CLARK: Just one very small additional
2 comment. The evolution of the pricing products is
3 important here. At the time of the preliminary
4 determination, as you noted, there were four. It was
5 based on the comments that came up during the
6 conference and in the post-conference briefing that
7 there was recognition it would be good to expand it,
8 so there was refinement. But throughout the process,
9 both at the time of the preliminary determination and
10 also now, the staff, and I think prudently, took the
11 position that we are --

12 CHAIRMAN KOPLAN: Did you say prudently
13 or --

14 MR. CLARK: No, I think prudent in the sense
15 that if you look at the pricing description, it says
16 here's the specification we're asking you to report
17 all your products on and the following are the product
18 brand names that we think fit, but don't limit
19 yourself to these product brand names, don't simply
20 report Finfix 700, if Finfix 700G belongs there,
21 Finfix 800 or other products, whatever fits the
22 specification needs to be reported.

23 So structurally, when you deal with a broad
24 range of specification you are going to capture a
25 number of individual customer specific products. You

1 happen to have the ability on the record in this case
2 to work with that greater level of detail and we are
3 prepared, as Bruce offered earlier, to provide at a
4 transaction level all of the individual products at a
5 transaction level so that you can begin to do the type
6 of head-on, actual point of competition analysis that
7 in some instances can be obscured by the comparison of
8 simple averages.

9 Averages are always telling you about
10 average competition. Competition does not typically
11 occur at average points, it occurs at specific points
12 and you have the data here to do specific comparisons.

13 MR. MALASHEVICH: Excuse me, Mr. Chairman.
14 I forgot to mention actually probably the most
15 important point is at the end of the day I think all
16 parties have to stand back and look at the traditional
17 price comparisons based on the products selected in
18 the final phase and ask ourselves do they make sense
19 and that is if you had subject imports underselling to
20 that degree without characterizing whether it's
21 significant underselling to that degree, for as many
22 of the instances found, how can they be losing market
23 share if the price comparisons are truly fair?

24 CHAIRMAN KOPLAN: Okay. Thank you.
25 Commissioner Miller? I'm going to try to put a simple

1 story to you and ask for your reaction to that because
2 it's the story we heard this morning from Aqualon,
3 which is essentially they lost market share in 2001,
4 2002, to Noviant and responded by cutting prices.

5 Now, companies, we all know, you decide
6 whether you're going to compete on price or try to
7 hold the price and lose volume. We see companies
8 approach markets different ways all of the time, so I
9 understand their story.

10 I'm not quite sure -- what is your answer,
11 your view of the market? Their view of the market is
12 they tried to hold market share by holding price. It
13 didn't work. They lost volume, so they answered by
14 lowering prices and lost profitability. What's your
15 view of the market since the last four or five years?

16 MR. HUIZINGA: These kinds of questions
17 aren't easy to answer, are difficult to answer.

18 In my view, the way I see it is that, for
19 example, the loss of market share happens at, for
20 example, one customer, which, I think, has been widely
21 discussed in that sense. You can argue with that and
22 say caused by price, or it was caused, say, for other
23 reasons, which reasons they are not playing as big a
24 role in that sense.

25 We try in the markets to partner with

1 definitely our strategic customers and provide more
2 than only the sale of the products but also provide
3 the know-how, service, willingness actually to think
4 with them and say, how can we improve, or how can we
5 modify products? How can we create new applications,
6 new products, and so on? I think, in that sense, we
7 have been successful over there, and I think that
8 those are issues which are counting, which are
9 valuable for customers and which are also driving that
10 decision, and I think that specifically has also been
11 driving, maybe in that sense, development's pace,
12 where we have been talking about.

13 COMMISSIONER MILLER: Okay. If I hear what
14 you're saying, you gave purchasers something more, so
15 you've been successful. If you gained market share,
16 it's because you gave them something more.

17 MR. HUIZINGA: Yes.

18 COMMISSIONER MILLER: Okay. That takes me
19 to 2002, but then, after 2002, between 2002 and 2004,
20 what happened next?

21 MR. HUIZINGA: What happened then, in that
22 sense, and I think that's what Aqualon also has said
23 this morning, is indicated a different attitude from a
24 competitor with Aqualon in the American market, much
25 more aggressive towards customers and towards the

1 markets in pricing and also causing a spiral of all of
2 these, causing the prices at specific customers going
3 down.

4 COMMISSIONER MILLER: So your general
5 perception would be that prices have gone down in the
6 last three years. It's just where are you and about
7 why they have gone down. I'm trying to understand why
8 they have gone down. Okay.

9 MR. MCKENZIE: It's Ken McKenzie for the
10 record. Maybe you can also add something for the
11 2001-2002 period, which is maybe a little bit of an
12 anomaly, but that's when the Procter & Gamble contract
13 aware was made. So, therefore, one customer in two
14 key segments, in paper towel and Sunny Delight, there
15 was a major shift away from Aqualon to us and others.
16 So that's going to have one big impact on the 2001-
17 2002 interface.

18 COMMISSIONER MILLER: And, obviously,
19 another big factor in the market the last three years
20 is the explosion in the oil field demand. It's a
21 little different product, or not a different product,
22 a different priced product. All right. I'm just
23 trying to kind of put it all together.

24 I appreciate your answers and your
25 willingness to try to help me sort through it all.

1 Thank you.

2 COMMISSIONER HILLMAN: Thank you. I hope
3 just a couple of quick follow-ups.

4 Mr. McKenzie, you had said, in response to
5 some questions from the chairman, that you were going
6 to try to help us understand this issue, as you
7 described it, of the reasonable price difference that
8 would encourage people to switch from using CMC to
9 using some other hydrocolloid. I just want to make
10 sure that in doing that, you're looking at it by
11 sector because, at least, I would assume that it might
12 be easier to switch in certain segments of the market
13 than it would be, say, in these food products where
14 the reformulations may be more time consuming and
15 expensive and the packaging and all of that that went
16 with it. Is that correct?

17 MR. MCKENZIE: Yes. That's correct. We
18 would probably suggest looking at the food market,
19 which is obviously consumer visible, perhaps
20 toothpaste, which has unique functionalities, and the
21 paper industry. So it's relatively simple to do the
22 comparisons through those three.

23 COMMISSIONER HILLMAN: Okay. I appreciate
24 that.

25 Mr. Somers, you mentioned this issue of

1 needing a dual source, and yet, Mr. Goss, as I heard
2 your testimony, you're purchasing entirely from a
3 single source. Is that correct?

4 MR. GOSS: That is correct.

5 COMMISSIONER HILLMAN: Okay. I'm just
6 trying to understand this issue of whether having more
7 than one source of supply is different in different
8 sectors or different based on size. Obviously,
9 Halliburton is a very major purchaser in very many
10 markets. Is it size that drives you to needing a
11 larger source of supply, or is there something else?

12 Mr. Goss, you seem to be comfortable with
13 one source of supply. It didn't strike me that you
14 were indicating that this was an issue of just price.
15 You're happy with the product you're getting, so need
16 to have a second source hanging out there.

17 MR. GOSS: I think, to protect the business,
18 we would like to have a second source just in case
19 there is an interruption in supply.

20 Some years ago, when we first started
21 getting involved in CMC, and there was an accident at
22 sea, a freighter, that was very scary, so we were
23 searching for other qualified suppliers. That's why
24 we've looked at other people. But once we find a
25 particular supplier, we stick with that because it

1 allows for us to have better uniformity because we can
2 anticipate out of a raw material.

3 COMMISSIONER HILLMAN: And from your
4 perspective, assuming, again, you're trying to match
5 the product that you're getting from Noviant -- you're
6 not looking to switch to a different hydrocolloid and
7 not trying to make a change, but, say, you would have
8 to switch to a different supplier. Is that as time
9 consuming and expensive a process as has been
10 described, or is there likely to be someone else that
11 can supply something that's relatively close enough to
12 what you're currently getting from Noviant that if you
13 needed to, you could, in a matter of days, weeks,
14 months, switch to using a comparable formulation of
15 CMC?

16 MR. MCKENZIE: I think that there's two ways
17 of looking at it. One, as an emergency basis, we make
18 something work. On a long-term basis, when we change
19 raw materials, even small ones, we have to go through
20 extensive print trials. It's not uncommon for us to
21 have to go through six or eight months' worth of
22 printing trials, end-use trials, with our products to
23 make sure that we haven't changed any of the
24 properties.

25 So, in the short term, if it was an

1 emergency, and you were going to shut the machines
2 down, you would do what you have to do. On a longer-
3 term basis, if you're going to switch a product out in
4 favor of another one, you would want to do extensive
5 trial work.

6 COMMISSIONER HILLMAN: Okay. From the
7 producers' perspective, perhaps I can go back to the
8 Mexicans, Mr. Piotti or Mr. Nessel -- from your
9 perspective, do you have a sense that many of your
10 customers in the U.S. market are satisfied single
11 sourcing, or, again, what portion of your customers
12 would prefer to have more than one source of CMC?

13 MR. NESSEL: Volker Nessel answering. We
14 have the perception that a very, very large percentage
15 of the U.S. producers are looking for a second and
16 even a third sources for CMC.

17 COMMISSIONER HILLMAN: A high percentage are
18 looking for a second source.

19 MR. NESSEL: Yes.

20 COMMISSIONER HILLMAN: And are actually
21 getting one, are actually currently dual- or triple-
22 sourcing, or they would just like to have one? It's
23 one thing to like to have it; it's another thing to
24 actually qualify and use product from two or three
25 different companies.

1 MR. NESSEL: No. They generally use a
2 primary supplier and keep a backup.

3 COMMISSIONER HILLMAN: Keep a backup.

4 MR. NESSEL: Yes.

5 COMMISSIONER HILLMAN: Okay. From Noviant's
6 perspective, do you have a sense of what portion of
7 your customers are currently dual- or triple-sourcing
8 CMC, again, for the same kind of grade and
9 application? Do people typically do that?

10 MR. HUIZINGA: Are you talking about the
11 U.S. or, say, --

12 COMMISSIONER HILLMAN: U.S., U.S.

13 MR. HUIZINGA: I think, say, overall, in
14 oil, they want to have dual supply because of the
15 volume they have and the -- power to utilize that as
16 well for themselves.

17 The paper industry, for example, as --
18 indicated, is much more of a fine-tuned process where
19 you don't want to have so many changes. So, in that
20 sense, they would like to have a backup supply. On
21 the other hand, no one will stick with one supplier.
22 That's what also we see at other paper mills, in that
23 sense. They stick with one supplier. Maybe they have
24 two validated.

25 In the food area, I think that's an even

1 split. I would say probably 50/50 are single sourcing
2 or multiple suppliers. Most of them definitely, as we
3 have seen, they will have more suppliers validated and
4 approved.

5 COMMISSIONER HILLMAN: Okay. The last
6 question. I wanted to understand the issue of this
7 volume discount, or however we're going to describe
8 the pricing being different for the major purchasers
9 of large volumes. Can you give me a sense of how much
10 volume discount is typically granted to a Halliburton
11 or another large purchaser?

12 MR. HUIZINGA: I would write back on that.

13 COMMISSIONER HILLMAN: If there is anything
14 that could be added in the post-hearing. Obviously,
15 Mr. Malashevich is asking us to look at the pricing
16 data that, to some degree, reflect what I would
17 describe as a volume discount, but at least a
18 difference in price for the largest purchasers. I'm
19 trying to understand, as a general matter, how
20 significant are volume discounts for this type of a
21 product. How much difference is there, and can we
22 fairly look at it? If you're producing a different
23 grade for a different, you know, purchaser, again, I'm
24 trying to understand, how do I see that as a volume
25 discount? Anything you can add in the post-hearing

1 would be helpful. Mr. McKenzie?

2 MR. MCKENZIE: Yes. Ken McKenzie again for
3 the record. May I just add one other sector, which
4 would be the toothpaste area? That is typically
5 single-sourced. They don't like qualifying multiple
6 sources because of the cost of qualification. So
7 typically, any change would be a strategic direction.

8 COMMISSIONER HILLMAN: Okay. All right.
9 Those are all very, very helpful answers, and I would
10 join my colleagues in thanking you all very much for
11 being here for what is a relatively long day for
12 everyone, so thank you.

13 CHAIRMAN KOPLAN: Thank you, Commissioner
14 Hillman.

15 Let me see if there are additional questions
16 from the dais. Seeing that there are none, Ms. Mazur,
17 does staff have questions of this panel?

18 MS. MAZUR: Yes, Mr. Chairman. I believe
19 Mr. Benedick does.

20 MR. BENEDICK: This is Gerry Benedick,
21 Office of Economics. I would like to begin with two
22 requests for Mr. Clark and Mr. Neeley, and this would
23 be for your post-hearing submission.

24 The first is, if you would please explain to
25 what extent the subject foreign purified CMC products

1 produced for the home market and produced for export
2 to third-country markets are not usable or acceptable
3 in the U.S. market, may be subject to long-term
4 contracts and/or other supply provisions that would
5 inhibit or prevent shifting of these products to the
6 U.S. market within a 12-month period. If you could
7 report separately for each subject country that you
8 represent and separately for the products produced for
9 the home market and products produced for the export
10 to third-country markets.

11 The second request for both of you is, in a
12 post-hearing brief, if you could please explain to
13 what extent are purified CMC products held in
14 inventory in the subject countries not usable or
15 acceptable in the U.S. market or committed to
16 customers by supply agreements that would inhibit or
17 prevent shifting of these products to the U.S. market
18 within a 12-month period. Again, please report
19 separately for each subject country that you
20 represent.

21 And while Mr. Lebow is here, I would like
22 you to report similarly for Aqualon's products that
23 they produce for export whether they would be usable
24 in the U.S. market and whether any long-term supply
25 agreements or other provisions would prevent the

1 shifting of those products to the U.S. market in a 12-
2 month period.

3 I now have a request again for the post-
4 hearing submission for Mr. Klett and for Mr.
5 Malashevich. If you could explain to what extent do
6 the other hydrocolloids act as substitutes versus
7 complements for the purified CMC, and what would be
8 the effect on the price elasticity of aggregate U.S.
9 demand for purified CMC based on the strength of
10 substitution versus complementarity of these
11 nonpurified CMC products with the purified CMC.

12 So, for instance, if they are more
13 substitutable than complementary, what would be the
14 effect on the overall demand elasticity? If they are
15 more complementary than substitutable, what would be
16 the effect on the overall demand elasticity?

17 MR. MALASHEVICH: Bruce Malashevich. I'll
18 be happy to do that.

19 MR. BENEDICK: Thank you.

20 MR. KLETT: This is Dan Klett. We will do
21 the same.

22 MR. BENEDICK: Thank you. No more
23 questions.

24 MS. MAZUR: Mr. Chairman, staff have no
25 further questions.

1 CHAIRMAN KOPLAN: Thank you.

2 Just for the record, Mr. Lebow, I didn't
3 hear you respond with your microphone.

4 MR. LEBOW: We would be pleased to provide
5 the information Mr. Benedick asked for.

6 CHAIRMAN KOPLAN: Thank you.

7 With that, I would like to thank this panel
8 for its testimony and for all of its responses to our
9 questions and look forward very much to receiving your
10 post-hearing submissions.

11 I can now excuse the panel, and we will go
12 to rebuttal and closing. I'm sorry. Before the panel
13 leaves, Mr. Lebow, you have 10 minutes remaining, I
14 see, from your direct presentation. Do you have
15 questions of this panel before I do release them?

16 MR. LEBOW: I have no questions for this
17 panel.

18 CHAIRMAN KOPLAN: Okay. Now, I'm releasing
19 the panel.

20 Respondents have two minutes remaining from
21 their direct presentation for rebuttal. Do you want
22 to use that?

23 MR. CLARK: Would it be permissible, Mr.
24 Chairman, to add that two minutes to the five minutes?

25 CHAIRMAN KOPLAN: I keep it separate.

1 MR. CLARK: You do?

2 CHAIRMAN KOPLAN: Yes. We run different
3 clocks on that.

4 MR. CLARK: We're happy to return our two
5 minutes to the chair.

6 CHAIRMAN KOPLAN: Accepted. Then we can go
7 directly to closing. Mr. Lebow? You can either do it
8 from there or come to the podium, Mr. Lebow, or the
9 table, wherever you're most comfortable. You may
10 proceed.

11 REBUTTAL/CLOSING REMARKS BY PETITIONERS

12 MR. LEBOW: Thank you. I'm going to include
13 some rebuttal with my closing. I think that will be
14 the most useful way to use the time. I realize it's
15 one reduced time period.

16 Just, first, to touch on a couple of points
17 made by the Respondents, Mr. Klett asked me to state
18 for the record that he did not fold all purchases
19 together for his price analysis. He looked at price
20 comparisons for each purchaser separately and then
21 added up the results. There is no distortion due to
22 mixing large-volume customer prices and small-volume
23 customer prices.

24 Second, choosing the particular pricing
25 product, Respondents were given ample opportunity to

1 comment on the staff's suggestions, and the one
2 suggestion they made was to take a pricing product
3 that covered about one of their main products and
4 expand it to cover six. There was no attempt at all
5 made to fine-tune or change the Commission's pricing
6 products.

7 Next, a point was made just now that as an
8 example of the substitutes of other hydrocolloids that
9 there was a situation where guar, for example, could
10 be substituted easily for CMC if the price got close.
11 But I remind you of the testimony of Ms. Cash this
12 morning that there are very important physical
13 limitations, particularly the beany taste of guar, and
14 it just can't be used on a one-to-one basis.

15 More importantly, we've had Respondents
16 telling us that, on the one hand, they sell highly
17 engineered, finely distinguished grades of CMC, and
18 yet, on the other hand, that other hydrocolloids and
19 price pressure from other hydrocolloids affects CMC
20 prices. They can't really have it both ways.

21 Regarding the Procter & Gamble reversed
22 auction, there was a very careful word used by Mr.
23 Huizinga. He said, We didn't get it all, and we
24 weren't the low-priced bidder. But to our
25 information, we think that they got the lion's share,

1 and they bid substantially below Aqualon.

2 Mr. Somers, in his testimony, made it clear
3 that price is very important in awarding contracts,
4 and, in fact, the Procter & Gamble situations show
5 that they did a bid, reverse auction, on price before
6 they had even qualified the substitute CMC.

7 The IMR report, which has been used by
8 Respondents to suggest that prices are going up for
9 hydrocolloids; they gave you the table. I'm going to
10 give you the complete report page, which says, among
11 other things, that a key factor to increased prices,
12 however, is the U.S. antidumping investigation into
13 this market, and it goes on beyond that.

14 Ultimately, what the Respondents are asking
15 the Commission to do is to wear blinders to look at
16 2002 to 2004 in a vacuum. It's as if a man were
17 standing in 2001, and in 2002 he is lying on the
18 ground, and you walked in in 2002. In 2003, he got on
19 his side. In 2004, he got on his knees. Between 2002
20 and 2004, it would seem that he had lifted himself a
21 bit, but if you look at the actual context of what had
22 happened, you would see that he is nowhere near back
23 to where he was, and, in fact, that's also the case
24 with CMC, both in terms of the growth of market share
25 and profitability.

1 And even without expanding the period of
2 investigation, if you just look at 2001 for conditions
3 of competition for context, then you would at least
4 have a framework within which to view the increases
5 that Mr. Clark points to between 2002 and 2004 in
6 Aqualon's market share. There's clear indicia of
7 material injury, price reduction, profitability, and
8 even if you just put 2002 into context, strong volume
9 effects.

10 Finally, since the yellow light has gone on,
11 I would just like to talk about threat. We heard from
12 Mr. Huizinga -- I think it was an admission -- I
13 wasn't quite clear, but I thought that he admitted
14 that their added capacity in Noviant in Finland in the
15 2000 period was contributing to the overhang and the
16 excess capacity in the world and to pricing pressure
17 after that period. Noviant is already the world's
18 largest producer. It has huge excess capacity and an
19 already very large market share in the United States,
20 and because of that, it is a source of real threat for
21 additional material injury to the domestic industry.

22 Now, Aqualon, to earn more money, can try to
23 raise its prices and see itself lose share if we don't
24 win this case, or it can continue the low prices, as
25 Mr. Herak testified, that even now it's not earning

1 any more money than it has in the past. Thank you.

2 CHAIRMAN KOPLAN: Thank you.

3 Mr. Clark and Mr. Neeley, your closing?

4 REBUTTAL/CLOSING REMARKS BY RESPONDENTS

5 MR. CLARK: Thank you. For the record
6 again, Matt Clark on behalf of the Noviant Group
7 Companies. A few very quick points.

8 On the question of reaching back into time
9 to 2001, there has been no discussion today about a
10 business cycle unique to the CMC industry, nothing
11 structural about the product or the industry that
12 would cause you to reach outside your normal period.
13 There is nothing missing from the three years of your
14 normal period of investigation. It fits with the
15 standard practice of the Commission. Everything you
16 need to know happens in your normal period of
17 investigation.

18 On page 3 of Aqualon's prehearing brief,
19 they make reference to the high-euro era. Earlier
20 today, we talked about the point in time when the euro
21 and the dollar reached parity. That's not back in the
22 days of 2000-2001; that's at the end of 2002 and now
23 beginning to move into 2003. What they are talking
24 about, what they base their case on, happens in your
25 normal period of investigation.

1 When you look at the record in this case,
2 when you look at how purchasers value the things that
3 drive the buying decision, -- not all purchasers are
4 the same -- please do look at the size of the
5 purchasers and how the big purchasers react. Today,
6 you heard from two major purchasers in the U.S.
7 Please do look at the market share that those two
8 account for. Look at the market share that Azteca
9 counts for of total demand in the United States and
10 then ask yourself, looking at that volume of total
11 consumption and what you heard today, what the real
12 cause of material injury is to Aqualon if you accept
13 that they have even been materially injured.

14 It should be clear to you now and beyond
15 significant debate that Finland, the Finnish plant of
16 Noviant or cannot produce food-grade and regulated
17 products. If we wanted to try to have that happen,
18 it's 12 to 18 months, at least, and multiple millions
19 of dollars. There is no reasonable overlap of
20 competition.

21 The final point: The reality of the U.S.
22 market today is that imports must serve this market.
23 Aqualon does not have the ability to serve the
24 existing demand in the market, much less the demand as
25 it is growing. Imports are part of the U.S. market.

1 They have always be part of the U.S. market. Noviant
2 came to this market in the early nineties because
3 there was a crying need from customers, Help us with
4 formulations. Make our paper mills run better. Give
5 us better drilling modes. Give us better
6 formulations. Give us better standup on our
7 toothpaste.

8 Noviant came here and put technical people
9 in the sales force. They built labs. They delivered
10 the need that was going unmet by Aqualon. It was not
11 Noviant that didn't call on one of the largest
12 customers in the market for two years. That was
13 Aqualon that let a customer sit out in the marketplace
14 all by themselves for two years until the customer had
15 to go to them. Thank you. I'm going to cede the rest
16 of the time to Mr. Neeley.

17 MR. NEELEY: Let me just take about a minute
18 and a half to say what you have heard and what you
19 haven't heard about Amtex. You haven't heard anything
20 saying that Amtex has excess capacity. I think we're
21 all in agreement that we are at full capacity in
22 Mexico. You have heard nothing today about how
23 pricing from Amtex as opposed to pricing from some
24 other company was hurting Aqualon. You have heard
25 that Amtex does not sell to distributors. I think

1 we're all in agreement on that also, that Amtex does
2 sell through distributors, whereas Aqualon does not.
3 I think we're all in agreement that the channels are
4 different.

5 We've heard nothing to say that Aqualon can
6 somehow sell to over half of our U.S. market, which is
7 the company, Azteca. I think that we're in agreement
8 that that is a customer that is banned, for good
9 reasons or bad. It doesn't really matter, but it's a
10 customer that is not open to Aqualon.

11 And, finally, I think if we look at pricing
12 data, pricing data that the Commission staff has
13 gathered, detailed pricing data or pricing data,
14 whatever level you want to look at, I think it
15 supports our theory of the case and what we talk about
16 in our prehearing brief, which is that when we look at
17 the conditions of competition, and we analyze those
18 conditions of competition, and we understand the
19 conditions of competition and how those fit with the
20 way that Mexico does business, there is a reason why
21 pricing is not the reason that Mexico has the limited
22 success that it has in the U.S. market. Thank you.

23 CHAIRMAN KOPLAN: Thank you, sir.

24 I want to compliment both sides on the
25 quality of their presentations today.

1 Post-hearing briefs, statements responsive
2 to questions and requests of the Commission, and
3 corrections to the transcript must be filed by May 19,
4 2005. Closing of the record and final release of data
5 to parties by June 8, 2005, and final comments by June
6 10, 2005. And with that, this hearing is adjourned.

7 (Whereupon, at 5:05 p.m., the hearing was
8 adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Purified Carboxymethylcellulose from
Finland, Mexico, Netherlands & Sweden

INVESTIGATION NO.: 731-TA-1084-1087 (Final)

HEARING DATE: May 12, 2005

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 5/12/05

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C.M. Miskell
Signature of Court Reporter